STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. L. V. Boardman

DATE: July 14, 1958

FROM : A. H. Belmont

Tolson
Boardman
Belmont
Mohr
Nease
Parsons
Rosen
Tamm
Trotter
Clayton
Tele. Room
Holloman
Gandy

SUBJECT: FUND FOR THE REPUBLIC
RUNNING MEMORANDUM

W. C. Sullivan

Consideration has been given to the value of this running memorandum, taking into account the time required to maintain it and its use, and it is felt it can be discontinued. The Fund for the Republic (FFR) running memorandum began in November, 1955, with the approval of the Director. It is a continuation of the monograph on the FFR written by the Central Research Section and has been brought up to date every three months since January 1, 1956, by the Liaison Section.

The latest addition to the running memorandum required approximately thirty-two hours Agent time for preparation and review and contained fifty-eight type-written pages, most of which were revised index and table of contents pages which required approximately ten hours stenographic and typist time.

This running memorandum has been of use in providing a readily accessible source for determining whether or not persons or activities have been previously affiliated with the FFR, as well as the nature of the affiliation and subversive backgrounds. It has also been used approximately once a month to answer inquiries from various Bureau supervisors.

Since all incoming mail regarding the FFR is indexed and filed in the FFR main file, it is believed the necessary work can be accomplished by a search through the Bureau's indices and a review of the references. This method would require more time in each instance but would not exceed the time and effort spent in preparation of the running memorandum. In some instances in the past, it has been necessary to use this procedure in order to obtain all information contained in Bureau files regarding certain individuals.

The original of the FFR running memorandum is maintained in the Office of the Director and copies in the offices of Mr. Nease, Mr. Boardman, Mr. Belmont and the Liaison Section. The running memorandum has grown to two volumes and many of the

EX-135

VJG:pwf/jy (6)

"ENCLOSURE ON BULKY RAMP"

1 - Mr. Boardman
1 - Mr. Belmont
1 - Mr. Nease
1 - Liaison Section
1 - Mr. Gaffney

REC-55 100-391697-563

EX-135

JUL 22 1958

LIAISON

names and projects are indexed to numerous pages. It is felt that at the present time this running memorandum is too cumbersome for the Director's use in providing a readily accessible source of information.

In the past it has been our practice to immediately advise the Director of any pertinent information developed concerning the FFR. This practice will continue and the activities of the FFR will continue to be closely followed in the Liaison Section.

RECOMMENDATIONS:

1. That the FFR running memorandum be discontinued and all copies be filed in the FFR main file, where they will still be accessible. Should it be determined at some date in the future that this running memorandum is again necessary, it will be brought up to date and the copies can be redistributed.

2. That the Liaison Section continue to follow the activities of the FFR and advise of all pertinent developments as they occur.

The Fund for the Republic, INC.

60 East 42nd Street, New York 17, New York

Telephone: MUrray Hill 7-1250

64238

Tolson
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Ne[illegible]
Mr. Pa[illegible]ns
Mr. R[illegible]n
Mr. Tamm
Mr. Trotter
Mr. V[illegible]an
Tele. Room
Mr. Holloman
Miss Gandy

July 11, 1958

Dear Mr. Hoover:

The enclosed was received today by the Fund. The writer is clearly mad. I thought you might like to have it in your files, although I do not know that it represents any problem worthy of investigation.

Yours very truly,

Hallock Hoffman
Secretary

J. Edgar Hoover
Director
Federal Bureau of Investigation
Washington, D. C.

ENCLOSURE

100-391697-564

REC-94

17 JUL 22 1958

Deleted Copy Sent Hallock Hoffman
by Letter 2/26/76 plb2
Per FOIA Request

1 auto copy 7-24-58

1 auto copy 7-22-58

EX-PROC.

JUL 14 1958

F-261

JUL 31 1958

UNRECORDED COPY FILED IN

SAN FRANCISCO CALIFORNIA

[illegible];

PLEASE, investigate the pays offs to the top Federal Bureau of Investigation, from the leaders of the MAFIA and the resultant cover ups provided to this dangerous organization by these federal officials. Mr. G. Edgar Hoover is directly involved through MAFIA connections in NY with [illegible], [illegible], LUCIANO, DEWEY, AND [illegible] and racing interests which he meets with often to arrange national [illegible]. In return the mafia is actualy used as an indircetoin to get individuals and organizations that dare to expose this affiliation, and for other FBI interests that are not for the best interest of the United States.

Under FBI sponsorship and protection these dangerous subversive MAFIA leaders who are now taking on under general orders respectable business and political fronts, in banking, distributorships, and even in the [illegible] OF [illegible] and every community in US is being infiltrated by these money elements on a comprehensive plan, and the resultant [illegible] of paying off the top police, SHERIFF, municipal and [illegible] OFFICIALS to do thier bidding and to intimidate individual and Small Businesses of thier choosing is more than being proven in current statistics and other records. Thier area of concentration where definite National Mafia Control can be easily proven, with the national protection of Mr. G. Edgar Hoover are in a nationwide communication systems supposedly for horse racing, by which is police communication and American Tel and Tel operated, business information blackmail system, called at one time [illegible], OR [illegible] SERVICE OR THE [illegible] SERVICE which many large unscrupulous business firms subscribe to such as [illegible] [illegible], AMERICAN TEL AND TEL, STANDARD OIL, AND NAVY [illegible]. Also in racket controlled beer and whisky and soft drink distributoin, Vending Machines, property ownerships, loan companies and now in California on a planned and comprehensive plan those elements are taking over the States banking system as a means of disposing illegally gained moneys and even the Governor and the State Police are in the Mafia pay.

In San Francisco, Los Angeles, Sacremento, and Seattle area the FBI district officers and thier controls in every county District Attorneys office are definetly in MAFIA pay so that none of these elements are ever brought to trail and the only ones that are harrassed and indicted under this rotten protection by Federal Officials are honest elements that dare expose the nations conspiracies and collusions going on, and the tactics used are befitting only the most [illegible] police state, because these federal officials use thier positions and power and facilities to cover up, and actually criminally slander honest persons, and use the MAFIA operative and methods to eliminate opposition. Business phones are now tapped on a comprehensive and illegal basis that no longer has anything to do with [illegible] purpose and law enforcement, and the current Small Business [illegible] tics more than prove this national conspiracy, [illegible] and businesses chosen are broke. [illegible] diverted [illegible] these paid of federal officials [illegible] other [illegible] effect thier illegal [illegible], [illegible] resorted to with fede[illegible]

[illegible]

SURE [illegible]

56[illegible]

FD-36 (Rev. 12-13-56)

FBI

Date: 7/21/58

Transmit the following in _____ (Type in plain text or code)

Via AIRTEL _____ (Priority or Method of Mailing)

Mr. Tolson
Mr. Belmont
Mr. Mohr
Mr. Nease
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. W.C.Sullivan
Tele. Room
Mr. Holloman
Miss Gandy

TO : DIRECTOR, FBI (100-391697)

FROM : SAC, NEW YORK (62-11998)

SUBJECT: FUND FOR THE REPUBLIC
MIKE WALLACE T.V.
INTERVIEW PROGRAM
INFORMATION CONCERNING

Enclosed herewith is a tape monitoring the MIKE WALLACE TV interview on ABC-TV, 10:00 - 10:30 p.m., on 7/20/58, with Dr. ROBERT M. HUTCHINS, President of the Fund For the Republic.

HUTCHINS said the object of industrialization is to reduce the amount of human effort and intelligence that is put into any single operation. Therefore you finally get machines down to the point where they could be operated by a twelve year old child.

He stated the American people are indifferent to education. They want their children to have diplomas and degrees that will admit them to certain

3- Bureau (100-391697)
1- New York (62-11998)

TBS:ptp
(5)

ENCLOSURE ON BULKY RAMP
REC-73 ENCLOSURE EX-138
Ltr 3/2/73 dated 3/19/73

REC-73 100-391697-56

EX-138

26 JUL 23 1958

53 JUL 30 1958

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

FD-36 (Rev. 12-13-56)

F B I

Date:

Transmit the following in _____
(Type in plain text or code)

Via AIRTEL _____
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NY 62-11998

occupations but the American people are not serious about education.

In view of the fact that this completes the MIKE WALLACE interview program on ABC-TV this case is being closed.

FOSTER

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

The Fund for the Republic INC.
60 East 42nd Street, New York 17, New York

HON. J. EDGAR HOOVER, DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
DEPARTMENT OF JUSTICE
WASHINGTON 25, D. C. 11E

TWELFTH OF A SERIES

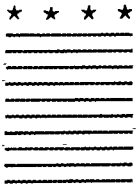
SURVIVAL & FREEDOM

A Mike Wallace

interview with

Robert M. Hutchins

Produced by the American Broadcasting Company
in association with
The Fund for the Republic



This is one of a series of thirteen Mike Wallace Interviews, produced by the American Broadcasting Company in association with the Fund for the Republic for the purpose of stimulating public discussion of the basic issues of survival and freedom in America today. This transcript has been edited. Single copies are available without charge from the Fund for the Republic; additional copies 10 cents each.

Robert Maynard Hutchins is President of the Fund for the Republic. Born in Brooklyn, New York, in 1899, he studied at Oberlin College and Yale University, with time out for service during World War I with the U.S. Army Ambulance Service and, later, with the Italian Army. He was appointed Secretary of Yale University while a student at Yale Law School. After graduation he taught at the Law School and was appointed Dean. He left that post to become President of the University of Chicago, and later its Chancellor. He is an Officer of the Legion of Honor, the recipient of numerous honorary degrees, and the author of many books, most recently "Freedom, Education, and the Fund" and "Some Observations on American Education."

WALLACE: This is Robert Hutchins, a vigorous social critic, a great educator, a man who has helped revolutionize our thinking on the role of education in America. His ideas still provoke controversy when he says that despite all our talk American education is still going down the drain, when he says that our Bill of Rights is not adequate to protect the individual in our modern society, when he talks about the role of religion and God in a free society. We'll talk about those issues with Dr. Robert Hutchins in a moment.

ANNOUNCER: The Mike Wallace Interview, presented by the American Broadcasting Company in association with the Fund for the Republic, brings you a special television series discussing the problems of survival and freedom in America.

WALLACE: Good evening, I'm Mike Wallace . . . In the last twelve weeks we have been discussing many aspects of the free society and what it must do to survive. We have interviewed two religious leaders, one a Protestant, one a Catholic—a millionaire industrialist who feared that we are endangered by police activities—a Supreme Court Justice who defended the rights of free expression even for dangerous ideas—a noted writer haunted by a vision of over-population and impersonal forces eating away our freedom —a former Presidential candidate who talked frankly about the hazards and frustrations of politics—a television executive who criticized the quality of TV today—a psychoanalyst who declared that we worship machines and care too little about our fellow-men—a Pulitzer Prize-winning editor who asserted that our press could stand considerable improvement—a leading businessman who said he deplored government incursions into the free enterprise system—and a military analyst who said we must be ready and willing to fight limited nuclear wars if necessary. One thing, I think, came through in most of those interviews: that somehow, as a nation, we are unprepared, that our response to the challenges we face is inadequate.

Tonight is the last scheduled p[illegible]of this series. Our guest: Mr. Robert Hutchins, former Dean of the Yale Law School, former President of the University of Chicago, now President of the Fund for the Republic.

Mr. Hutchins, first of all let me ask you this. As I've pointed out, we've been interviewing leaders in public life on the problems of survival and freedom, on the threats to, the incursions into our freedoms. What do you think are the enemies of our freedom?

HUTCHINS: I think the principal enemy of freedom is illusion. I think this series in effect shows that. Whether the items in our life described by these gentlemen are really illusions or not, that's what they were actually calling attention to. They tried to call attention to the things they think are illusions.

WALLACE: Could you specify—over the series?

HUTCHINS: Mr. Huxley questions the benefits to be conferred by an infinitely advancing technology. Mr. Justice Douglas questions the effectiveness of attempting to suppress freedom of speech in the name of national security. Monsignor Lally suggests that there are certain illusions about the church. Mr. Kissinger indicates that perhaps some of the actions of the State Department are conducted under the influence of illusion. Mr. Percy says maybe it is an illusion that we shouldn't trade with Russia and China.

WALLACE: I gather that there are—or am I right when I suggest that there are—a set of so-called Hutchins illusions?

HUTCHINS: I have a great many, yes.

WALLACE: Well, then, let's hear some of those illusions.

HUTCHINS: These are not my illusions I am about to talk about. It's the illusions that I think other people have. I would say that the great pervasive American illusion is the illusion of the importance of size or quantity. I would say that there is the illusion of our technical superiority. There is the illusion that we don't have to think. And there is the illusion which is related to all these illusions—the illusion of progress.

WALLACE: [redacted]ay we take them one by one. Let's start with size and quantity. What do you mean about the illusion of size or quantity?

HUTCHINS: The illusion of size or quantity is that the bigger a thing is, the better it is. I don't think that this is materialism because I don't believe that Americans are as materialistic as Europeans are. The idea that you count things or measure things and in that way tell how good they are is a result of laziness. It is also a result of the fact that we're trying to keep the peace in a pluralistic society. We don't want to argue about anything important. So we say "Well, we know the Empire State Building is higher than the Lincoln Building, and all you have to do if you want to prove that is to get out your tape measure and run it up." This settles the argument and we can go back to our peaceful pursuits.

You see this in almost every walk of life. You see it in education, for example. George Santayana tells about crossing Harvard Yard in the 1880's when he was teaching philosophy at Harvard. He met President Eliot, who said to him: "Tell me, Mr. Santayana, how are your classes going?" Santayana started to tell him about how bright his pupils were and all the interesting things they were learning and, Santayana says, "Eliot cut me off as if I was wasting his time. He said: 'I mean, Mr. Santayana, how many men have you in your classes?' " When we discuss education today we do so in terms of money, numbers of students, numbers of buildings, and so on.

WALLACE: We'll come a little bit later to education specifically, but I think that we understand the illusion of size and quantity now. The second illusion was that of our technical superiority?

HUTCHINS: You really don't need to discuss that because it has been so obviously exploded. We first thought that the Russians couldn't produce an atomic bomb. We then thought that they couldn't produce a hydrogen bomb. We then thought that they coudn't send up a satellite. They've done all three.

WALLACE: The third was that we don't have to think—the illusion that it's unnecessary for us to think.

HUTCHINS: Yes, this is the real basis of the anti-[redacted]ism in the country. We're a group of practical people hacking out the continent, you know. We're going to develop all these material goods which we're going to count and measure, and if you can count you don't have to think. This is the way in which you determine whether anything is good or bad. Of course, the real way to determine whether anything is good or bad in a practical order is to ask what it is you're trying to do. Then you measure your result in terms of your standard. But this requires thought.

WALLACE: The fourth illusion was that of progress.

HUTCHINS: I would only say further—on the other one—that a celebrated sociologist made a remark that always interested me. He said that if you don't know where you're going, any road will take you there. Now, the illusion of progress.

WALLACE: Yes.

HUTCHINS: The illusion of progress is perhaps best illustrated by the remark of a Burmese who attended an international conference. He said that since his country was rather backward he had no sex crimes to report, but they were making rapid progress and he hoped that at the next meeting he might be able to do better. Here, again, the question is: What is the total effect of the social organization on the total society and can you delude yourself into pointing to your material accomplishments as a measure of that society?

WALLACE: If we accept these as at least four of the illusions under which we currently labor in the United States, the question must follow. How did we get that way? Where did these illusions come from?

HUTCHINS: You get some light on that if you think about what Thomas Jefferson's prescriptions for the successful republic were. He said that there were four reasons why the American republic was going to succeed in spite of the fact that he thought such a form of government could not succeed in Europe. He said, first, we weren't going to live in cities; second, we were all going to be self-employed; third, we were all going to participate in local government; and, fourth, we were all going to be so well-educated we could

e with any problems that confronted us. As it happens, the first three of these have not been fulfilled. We know that most of us are employed by others. Most of us live in cities. Nobody would suggest that local government is a training ground for civic virtue. And I certainly would not suggest that we were so well-educated that we could cope with any problems that confronted us. Jefferson's ideals are valid. But how do they maintain their vitality when the facts to which they were applied have been entirely altered? What happens is that we hide behind a cliché curtain, a veil of slogans and illusions that separates us from reality. We go right on talking as though we were still in the eighteenth century. But the facts are quite different.

WALLACE: What do you suggest that we do about it? Are you suggesting that we rewrite the Constitution set up by our Founding Fathers—that they did not understand the conditions that prevail today and that we've got to do something about it?

HUTCHINS: I yield to nobody in my admiration for the Founding Fathers. I certainly yield to nobody in my admiration for the Constitution. But I think that conditions have drastically altered. The world has been not only industrialized but polarized. Conditions have altered in such a dangerous way that we must be prepared to recognize, as the other men in this series have tried to suggest in the fields with which they have dealt, the difference between illusion and reality—the difference between a slogan and a principle and the difference between the eighteenth century and the second half of the twentieth.

WALLACE: You talk about the difference between illusion and reality. You talk about a cliché curtain. What I would like to understand is why it is that I and so many of my fellow-citizens are willing to buy illusion instead of reality. Why do we close our eyes to reality?

HUTCHINS: I am sure, Mr. Wallace, that you are not the victim of any such sales talk, but I think that the reason for these illusions is that they are comfortable. Why did we say, for example, when we were able to drop an atomic bomb that the Russians would never be able to make one? A

WALLACE: And do you feel that the press of the nation came sufficiently to his defense when he was subpoenaed by the House Un-American Activities Committee?

HUTCHINS: That was a masterly error that aroused the press all over the country.

WALLACE: Of course, one public institution that has come under fire from all sides recently has been our education, our schools—particularly since Sputnik, as you pointed out. Now, from all this hue and cry about education, what do you think has been accomplished and will be accomplished as a result of this jolt to our complacency?

HUTCHINS: Nothing.

WALLACE: Nothing?

HUTCHINS: Nothing.

WALLACE: In spite of the slick magazines and television and radio commentators and newspaper editorials and all this—nothing. Why?

HUTCHINS: Because our complacency hasn't been jolted. It has been temporarily nudged.

WALLACE: Why hasn't it been more than temporarily nudged?

HUTCHINS: You will recognize that the American people, no matter what they say, are really indifferent to education. They can get temporarily excited about it. They want their children to have the diplomas and the degrees that will admit them to certain occupations, but the American people are not serious about education.

WALLACE: I would like to know why. Do you think that people from other countries are more serious about education?

HUTCHINS: Oh, yes.

WALLACE: And what's wrong with us that we are not more serious?

HUTCHINS: The reason other people are serious about education in other countries is that in other countries education is the only road to success. In Russia it's a road to very brilliant success or may be the road to such success. In Europe this is true, though perhaps to a less extent than it is in

Russia. But education has nothing to do with success in the United States. A child of mine—I won't say a child of yours because such a thought is impossible—but a child of mine who was just above the level of moron could, I'm sure, acquire the diploma and certificates necessary to enable him to get a job and make a comfortable living. So why should we get excited about education?

WALLACE: You have said, Mr. Hutchins, and I quote you here: "By definition, a moron is a person who cannot think and one of the benefits conferred upon us by the industrial revolution is that it has made it possible for morons to be successful." Would you care to enlarge on that?

HUTCHINS: Well, this is perfectly obvious. The object of industrialization is to reduce the amount of human effort and intelligence that is put into any single operation. Therefore, you finally get machines down to the point where they can be operated by a 12-year old child or could be if the law would allow it. This means that it is possible for a moron to be successful. The horror of this situation is not in the fact that morons can be successful—something which I heartily applaud. The horror of the situation is that people who are not morons are doing work that morons could do. The assembly line is a cramping, narrowing, non-human, and anti-human industrial phenomenon.

WALLACE: Are you suggesting that we do away with our assembly line, do away with technological progress?

HUTCHINS: Not at all, not at all. I'm all for technological progress and I would like to see it accelerated so that we got automation. This might have the effect of releasing individuals from this subhuman labor. It is transitory anyway, because the aim of industrialization is clearly to substitute, at every point where it can be substituted, a mechanical process for a man.

WALLACE: And therefore automation would free human beings to do what?

HUTCHINS: It would free human beings to be human, in a word.

WALLACE: Let's come back specifically to education for a moment. You suggest that we change our awards for the properly educated man and we will upgrade education. Is that what we have to do to jolt our complacency?

HUTCHINS: I think something of that sort is required. It is not too difficult to change the symbols of a culture. This would have to be done if we were ever to get the kind of educational system that I should regard as at all satisfactory for a country of this type. You have to provide the incentive in the culture that leads the family and the child and the environment to attach importance to intellectual achievement.

WALLACE: How does this square with your statement earlier in the program, in which you said that Americans are not materialists—you feel that Europeans are more materialist than Americans—and yet, at the same time, you suggest that European educational facilities, and the respect given to the educated man, are greater than here in the United States because we respect material success more than they do.

HUTCHINS: The question that we were discussing is the question of the fallacy or illusion of the importance of size or quantity, and I was simply saying that we cherish this illusion of size or quantity. Not because we value money in itself—for example, Americans give away money with an abandon, almost with a frivolity that couldn't be equalled anywhere in the world. It isn't that they attach importance to these counters themselves. They attach importance to the fact that they have a large number of them.

WALLACE: Let's tackle a related issue for a moment. As an educator who has devoted himself to the free exchange of ideas, how do you regard the impact of the church on education in our society? For instance, some of the activities in churches and church-related organizations—the pressure groups, in the censorship, the pressures on morality, gambling, drinking. Are these compatible with education and democracy as you see it?

HUTCHINS: I was brought up in the home of the Anti-Saloon League. I deprecated its efforts. I deprecated

its success still more, but I wouldn't have suppressed it. It seems to me the churches—or any other group for that matter who feel that they have a message for society—should be allowed to preach it, to organize for it, to press for it in every conceivable legal way they can.

WALLACE: I'd like to put a couple of fairly personal questions to you, sir. Have you worked out for yourself a logical, effective philosophy of what kind of world we should be striving for—what kind of world you would like to live in—a specific political, social, economic system that you believe would bring about the kind of world you would like to live in?

HUTCHINS: Certainly not.

WALLACE: Why not?

HUTCHINS: Entirely apart from the limitations on my intelligence and time, this is an enormous job, and I would think that if I did finally map out a blueprint I'd better throw it away and see whether I could improve it immediately. Because to me life is learning and the life of a democracy is a common educational life in process.

WALLACE: Could it be that this is one of our greatest problems? There's nothing wrong with discussion and study but we're challenged right here and now for our existence by a force—communism—which has a very clear and definite purpose and philosophy, and we here in America seem to be floundering somewhat as if we'd suddenly been thrust into a strange world, whereas the fact is that we have been living through these times just as the Russians have. Some of the things that you've said lead me to believe that you feel that Americans have been sleep-walking while the Russians have been wide awake over a period of the last fifty years.

HUTCHINS: Without passing on the question of whether the Russians are awake, asleep, or half-asleep I would say that it seems to me that somnambulism is one of the great features of America at this day, and it also seems to me to be a crime. The republic, the political republic, and the republic of learning go hand in hand. Government by consent means that each act of assent on the part of the governed is a product of learn-

ing. This means that far from not having to think we have to think all the time. We have to think about everything and we have to be equipped through our education to do it.

WALLACE: In the popular use of the term I think it would be fair to say that you are a liberal. Is that reasonable to suggest, Mr. Hutchins?

HUTCHINS: I'm also a conservative.

WALLACE: Well, we have a minute left. You are . . .

HUTCHINS: You brought it on yourself.

WALLACE: Well, I agree, I agree. But I think you are regarded in the United States as an important and influencial liberal. Now, I'll go along with the fact, and I think most of us would, that we have to learn and we have to think, and so forth. But the liberal, particularly in the United States, is often accused of thinking too much and acting insufficiently perhaps—of not coming up with answers. What the American people are looking for, I imagine, is answers—how to cope directly and effectively with our most pressing problems. Your answer is to keep thinking?

HUTCHINS: My answer is a little bit more than that. It is to identify the problems, to try to clarify the issues, and to promote the most active discussion that can possibly be engaged in. It is only in these things that we can have faith, and we must have it.

WALLACE: This ends our series on the problems of Survival and Freedom. It was brought to you with the cooperation of the Fund for the Republic, to which I give thanks. Admittedly, over the past thirteen weeks, our guests have asked more questions than they have answered, we have posed more problems than we have solved. But there is, perhaps, as Mr. Hutchins pointed out, no more vital function. For, as he once wrote, a free society must "agree to little more than the proposition that we should keep talking. We must make sure that everybody who has anything to say can say it. The essential freedom is freedom of speech, the freedom to criticize, to talk back." And of course the essential responsibility is to think.

The Fund's Study of the Free Society

The major program of the Fund for the Republic is a study of the basic issues underlying a free society. This study is directed at clarifying fundamental questions concerning freedom and justice that emerge when the forms and principles developed by eighteenth century America meet the ideas and practices of today's highly developed industrial society. One of the aims of the study is to widen the circles of public discussion of these questions. It is for this reason that the Fund is assisting in the presentation of the Mike Wallace Interviews.

The task of clarification is being undertaken by ten distinguished Americans acting as a Central Committee of Consultants to the Fund. These men are:

A. A. BERLE, JR.
Attorney, author, former Assistant Secretary of State

SCOTT BUCHANAN
Philosopher, author, former Dean of St. John's College

EUGENE BURDICK
Political scientist, University of California; novelist

ERIC F. GOLDMAN
Professor of history, Princeton; Bancroft Prize winner

CLARK KERR
President, University of California; labor economist

HENRY R. LUCE
Editor-in-Chief, Time, Life, Fortune

JOHN COURTNEY MURRAY, S.J.
Theologian, Woodstock College; editor of Theological Studies

REINHOLD NIEBUHR
Vice-president and graduate professor, Union Theological Seminary

ISIDOR I. RABI
Nobel Prize scientist; Higgins Professor of Physics, Columbia University

ROBERT REDFIELD
Professor of anthropology, University of Chicago; former president, American Anthropological Association

ROBERT M. HUTCHINS
President of the Fund, serves as Chairman of the Committee

The Fund for the Republic

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Religion and the Free Society

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A CONTRIBUTION TO THE DISCUSSION OF
The Free Society
FUND FOR THE REPUBLIC PAMPHLETS

A CONTRIBUTION TO THE DISCUSSION OF

The Free Society

This is one of a series of pamphlets that will be issued in connection with the Fund for the Republic's study of the basic issues underlying a free society. This study is directed at clarifying fundamental questions concerning freedom and justice that emerge when the forms and principles developed by Eighteenth Century America meet the ideas and practices of today's highly developed industrial society.

The task of clarification is being undertaken by ten distinguished Americans acting as a Central Committee of Consultants to the Fund. To assist them in their consideration of Religion in a Democratic Society eight additional consultants have been appointed. They are: William Clancy, Education Director, Church Peace Union; Arthur Cohen, publisher, Meridian Books, Inc.; Rabbi Robert Gordis, Jewish Theological Seminary of America; William Gorman, former associate director, Institute for Philosophical Research; Mark DeWolfe Howe, Harvard Law School; Robert Lekachman, Barnard College of Columbia University; Dr. William Lee Miller, Yale Divinity School.

"Religion and the Free Society" is the first pamphlet to result from the work of these men. It includes a "structure of the problem" as seen by four of the consultants, who speak out of distinct theological and philosophical traditions but share a common concern for the free society. The pamphlet also includes a comprehensive analysis of Supreme Court decisions dealing with the establishment and free exercise of religion by Maximilian W. Kempner, of the law firm of Webster, Sheffield and Chrystie, counsel to the Fund

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124. 343 U.S. at 318 footnote 4.

125. 343 U.S. at 325.

126. See Paulsen, "Preferment of Religious Institutions in Tax and Labor Legislation," 14 Law & Contemp. Prob. 144 (1949).

127. Massachusetts v. Mellon, *supra,* note 99. A taxpayer's suit to enjoin the payment of salaries to congressional and military chaplains was dismissed for the same reason. Elliott v. White, 23 F. 2d 997 (D.C. Cir. 1928). Some state courts take a more lenient view and allow taxpayer's suits.

128. The words of Professor Sutherland are appropriate here: "... A few months after the *McCollum* decision was handed down, a member of the board of education in an upstate New York village had occasion to visit his school. Christmas was coming, and small children had pasted up in their classrooms various pictures—laden camels, and wise men, and a star with spreading rays, and cut-outs of a canonized Lycian bishop of the early Christian church, named Nicholas, white bearded and dressed for sleighing in red garments. As the trustee had learned of the *McCollum* case he fell to thinking about these clearly sectarian manifestations to which the children of the district, under threat of the truancy laws, were unavoidably subjected. He wondered curiously whether a federal court, if asked, would send a marshal, heavy with the power and majesty of these United States, to scrape the children's pasted pictures from the schoolroom walls." [Footnote omitted], Sutherland, "Due Process and Disestablishment," 62 Harv. L. Rev. 1306, 1344 (1949).

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right sermon. Even such a 'science' as biology raises the issue between evolution and creation as an explanation of our presence on this planet. Certainly a course in English literature that omitted the Bible and other powerful uses of our mother tongue for religious ends would be pretty barren. And I should suppose it is a proper, if not an indispensable, part of preparation for a worldly life to know the roles that religion and religions have played in the tragic story of mankind . . ." 333 U.S. at 235-6.

112. For purposes of this discussion, "released time" will mean a certain period of time (usually one hour or less a week) during regular school hours when the school authorities permit students, whose parents consent, to attend religious instruction. Those students who do not attend continue their normal secular studies. "Dismissed time," on the other hand, is a period of time at the end of the school day when all students are dismissed earlier than usual. The students are then free to attend religious instruction or to do anything else they please.

113. *Supra,* note 109.

114. 343 U.S. 306 (1952).

115. 333 U.S. at 209-10.

116. See dissent of Mr. Justice Jackson, Kunz v. New York, *supra,* note 10, at 311 footnote 10.

117. Saia v. New York, *supra,* note 15.

118. See also McKnight v. Board of Public Education, 365 Pa. 422, 76 A. 2d 207 (1950), *appeal dismissed for want of a substantial federal question,* 341 U.S. 913 (1951), where a school board acting pursuant to a state statute which authorized the use of public school buildings for "social, recreation, and other purposes" refused to authorize the use of a public school auditorium to a religious group for Bible lectures. The board had consistently refused the use of school buildings to religious groups. The refusal was upheld by the highest court of Pennsylvania.

119. Justices Black, Frankfurter, and Jackson each wrote separate dissenting opinions.

120. 343 U.S. at 312-3.

121. 343 U.S. at 314.

122. See Mr. Justice Frankfurter's opinion, 343 U.S. at 320.

123. 343 U.S. at 311. Justice Black states his disagreement by phrasing the issue of the case in these terms: ". . . Here the sole question is whether New York can use its compulsory education laws to help religious sects get attendants presumably too unenthusiastic to go unless moved to do so by the pressure of this state machinery . . ." 343 U.S. at 318.

95. Watson v. Jones, *supra,* note 3, which was decided before the First Amendment had been made applicable to the states through the Fourteenth. The case arose in federal court, so that the decision is based on the then federal common law.

96. *Id.* at 728-9.

97. *Supra,* note 36.

98. Bradfield v. Roberts, 175 U.S. 291 (1899).

99. Not only may the establishment clause be interpreted differently today, but a taxpayer may not have standing to raise the issue under current case law. See Doremus v. Board of Education, 342 U.S. 429 (1952); Massachusetts v. Mellon, 262 U.S. 447 (1923).

100. Pierce v. Society of Sisters, *supra,* note 50.

101. Cochran v. Louisiana State Board of Education, 281 U.S. 370 (1930).

102. When funds paid to parochial schools are not those of the state, no violation of the First Amendment is involved. See Reuben Quick Bear v. Leupp, 210 U.S. 50 (1908), where the Government acted as trustee for an Indian tribe. The payment in accordance with the tribe's request that the funds be used for parochial schools was upheld.

103. 281 U.S. at 375.

104. Everson v. Board of Education, 330 U.S. 1 (1947).

105. 330 U.S. at 15-16.

106. 330 U.S. at 27-8.

107. Doremus v. Board of Education, *supra,* note 99.

108. 342 U.S. at 434.

109. McCollum v. Board of Education, 333 U.S. 203, 214 (1948).

110. 333 U.S. at 216-7.

111. Mr. Justice Jackson touched on the problem in his concurring opinion in the *McCollum* case with these words:

> "... Perhaps subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view. Yet the inspirational appeal of religion in these guises is often stronger than in forth-

by William Lee Miller

RELIGION AND THE AMERICAN WAY OF LIFE

T. S. Eliot once described culture as the "incarnation" of the religion of a people. He said: "There is an aspect in which we could see a religion as the *whole way of life* of a people, from birth to the grave, from morning to night and even in sleep, and that way of life is also its culture." "Culture," he said, "includes all the characteristic activities and interests of a people: Derby Day, Henley Regatta . . . the Twelfth of August, a Cup Final, the Dog Races, the Pin Table, the Dart Board, Wensleydale Cheese, Boiled Cabbage cut into sections, Beetroot in vinegar, 19th Century Gothic Churches, and the music of Elgar . ... and . . . what is part of our culture is also a part of our *lived* religion."

Though this view, associating religion with all those dubious British culinary specialties, presents altogether too spacious

an idea of religion, it may serve to counterbalance the narrower views that often appear in discussions of religion in American culture. There is a more significant relation of religion to American freedom than would appear in our perennial controversies about Bingo games, parochial school buses, and crêches on the high-school lawn. In the narrower view religion is seen as just one subsection of a culture composed of neatly separated institutional slices, one set of institutions alongside others, one set of ideologies alongside other ideologies. Mr. Eliot's definition is an extreme example of a contrary view—a view like that of the theologians who see religion not as one institution of society but as the very "substance" of culture.

The use of the word "religion" in this large and rather confusing way, of course, brings everyone over into the "religious" arena, where the theologians can fight on their own ground. Mr. Eliot's religious embrace of Wensleydale cheese and some young American church folk's discussion of the "theology of jazz" may represent this reduced to absurdity. Yet such a way of looking at the matter does bring home an important point: in their own view of themselves, the religions of the Bible are vastly more than a subordinate sociological datum performing an increasingly peripheral function in society. The religions want to be the source of the secular culture, determining its nature from a point of reference beyond it. Maybe the individualistic religious groups that have been dominant in America have not made this point by invoking the inclusive conceptions of Mr. Eliot's High Anglicanism, but the intent behind their different language is in the end the same. They intend religion to be the mainspring of life. Sometimes, they succeed. But whether they succeed or fail, their religious efforts cannot fully be understood apart from the intent. They are right in presuming that some pervasive set of ideas and values takes shape in the society. The question is, what is that ethos? And, how is the religious tradition of our society related to it?

83. 325 U.S. 561 (1945).

84. The recent cases granting admission to the Bar to former members of the Communist Party throw further doubt on the strength of In re Summers. Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232 (1957); Konigsberg v. State Bar of California, 353 U.S. 252 (1957). Curiously enough the opinions in the latter two cases mentioned In re Summers only once and then on a procedural point.

85. *E.g.*, Jamison v. Texas, *supra*, note 20; Davis v. Beason, *supra*, note 41.

86. See Pfeffer, *op. cit. supra*, note 4, at 118-124.

87. *Id.* at 119.

88. Vidal v. Girard's Executors, 43 U.S. (2 How.) 126 (1844).

89. *Id.* at 199.

90. "... 'That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience; and no preference shall ever be given by law to any religious establishment or modes of worship.' ..." *Id.* at 198.

91. *Ibid.*

92. Pfeffer quotes Jefferson to contest this statement. Pfeffer, *op. cit. supra*, note 4, at 214. Church of the Holy Trinity v. United States, 143 U.S. 457 (1892), held that a federal statute prohibiting the importation of foreigners to work in the United States did not apply to a church that contracted with an English clergyman to have him come here as rector of the church. In construing the intent of Congress, the Court referred to the many references to God and religion in state constitutions and other public documents to show that "this is a religious nation" (143 U.S. at 470) and that the statute could therefore not have been intended to reach this situation.

93. Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952).

94. 343 U.S. at 505. The concurring opinion of Mr. Justice Frankfurter (at 507-540) is worthy of note among other reasons as a fascinating bit of etymological scholarship into the word "sacrilege." He demonstrates the vagueness of the term and concludes that its meaning is not sufficiently precise as a test for censorship.

66. A religious organization may obtain social security coverage for its employees if two-thirds of the employees desire it. Int. Rev. Code of 1954, §3121 (k) (l).

67. In New York, for example, religious organizations are required to provide compensation coverage if four or more manual workers are regularly employed. Op. Atty. Gen., 48 State Dept. 870 (1933).

68. Here New York law does not require or permit insurance for employees of nonprofit organizations. N.Y. Labor Law §560 (4).

69. Arver v. United States, 245 U.S. 366 (1918).

70. 245 U.S. at 390.

71. *See* United States v. Macintosh, 283 U.S. 605, 623 (1931). The statement of the law on this point is still applicable, despite the overruling of the citizenship issue by the *Girouard* case discussed below.

72. Gara v. United States, 178 F. 2d 38 (6th Cir. 1949), *aff'd by equally divided Court*, 340 U.S. 857 (1950).

73. 293 U.S. 245 (1934).

74. 293 U.S. at 266.

75. 34 Stat. 596 (1906), quoted in United States v. Schwimmer, 279 U.S. 644, 646 (1929).

76. United States v. Schwimmer, *ibid.*

77. United States v. Macintosh, *supra*, note 71; United States v. Bland, 283 U.S. 636 (1931). The applicants in these three cases would have been desirable citizens in every other way. Two of them would never have been required to bear arms because they were women. The applicant in the *Macintosh* case was the Dwight Professor of Theology at the Yale Divinity School.

78. As to the merits of the dissenting opinions, suffice it to say that the *Macintosh* dissent was written by Chief Justice Hughes and joined by Justices Holmes, Brandeis and Stone.

79. United States v. Schwimmer, *supra*, note 75, at 654-5.

80. Girouard v. United States, 328 U.S. 61 (1946). This holding was reaffirmed in Cohnstaedt v. Immigration and Naturalization Service, 167 Kan. 451, 207 P. 2d 425 (1949), *rev'd per curiam without opinion*, 339 U.S. 901 (1950).

81. 54 Stat. 1157 (1940) [later amended by 66 Stat. 258 (1952), 8 U.S.C. §1448 (Supp. 1954)].

82. 328 U.S. at 64.

In this essay I hope to identify certain problems of thought, creed, and ethics in the "free society" under modern conditions, and to indicate that each of these problems is reflected in popular attitudes toward religion. I want to connect contemporary religion in America, if not with the American counterpart of Mr. Eliot's beetroot-in-vinegar, at least with some of the larger attitudes and values that give rise to corresponding expressions of our culture.

I list three problems. They are closely related to each other and grow not only from the nature of modern mass society but also from the nature of the free society itself.

First, there is the widely prevalent and intellectually debilitating relativism that removes the link between mind or conscience and an objective truth or value. One can find more than a hint of this, for example, in the attitude of typical American college freshmen coming into a religion class. They may say, "I am a Presbyterian; please teach me what we believe. And while you are at it, I'd like to learn about Mormons, Catholics, Jews, Christian Scientists, and other interesting religions." Or they may say, "I signed up for this course because I want to develop a Personal Faith." They may look on religion in a flat, institutional way, with denominational affiliation taken as a sort of team membership, simply a given fact of one's birth, or approach it in a thoroughly individualistic and subjective way as a matter of "personal philosophy." What is missing in either case is the possibility that there might be a connection between religious affirmation and some objective order of reality.

The freshman is not altogether original in this omission. He would seem to be an authentic representative of the larger society, in which many other samples of it can be found. The radio program called "This I Believe," to take another example, had—as someone said—plenty of "believe" and quite a bit of "I," but not very much "this." There was a great deal of

"faith" professed but the "believers" were often sublimely vague about just what it was they believed in. The program, a very popular one, was founded on a widespread attitude, the belief in believing, the faith in faith itself. The attitude is thunderously obvious in the religiosity of Americans from the President on down. And this inclination to exalt the fact of "faith" rather than any object of it, the subjective experience rather than theological content, is not just a result of the "tolerance" of our public discourse; it is also a definite part of the attitude of many and is frequently given quite explicit formulation.

The response evoked by articles critical of "positive thinking" and official Washington piety illustrates the same point. Two arguments were consistently reiterated: 1) the religious *sincerity* of the individuals in question; and 2) the *numbers* of people who had responded favorably to their appeal. What was remarkable in addition to the astonishing consistency with which these same two arguments recurred was the air of utter finality with which they were always given, as though they answered all doubts and no other questions could possibly be asked. The evocation of the *numbers* who respond positively to the "positive thinking" message was to say to the critic: "Well, now, friend, if all these vast millions like it, just *who* are *you* to say it's no good?" The testimony to the *sincerity* of the personalities assumed that any criticism must be implying that the popular preachers were hypocritical, for what other grounds for criticizing a man's religious message could there possibly be?

These attitudes toward religious matters appear elsewhere, under other guises, throughout our society. The emphasis on "sincerity," for example, is noted by the analysts of *The Lonely Crowd.* They see the current desire for "sincere" entertainers and "sincere" Presidential candidates as part of the "other-direction" of our time; they note the inclination of the modern public to prefer "sincerity"—with which it can identify—to talent or skill, with which it cannot. It is regret-

53. Meyer v. Nebraska, 262 U.S. 390 (1923). The Court based its decision on the "liberty" of the Fourteenth Amendment due process clause. The Fifth Amendment has been similarly construed to prevent the federal government from imposing unreasonable restraints on private schools in Hawaii that taught foreign languages as a supplement to but not as a substitute for public schools. Farrington v. Tokushige, 273 U.S. 284 (1927).

54. 197 U.S. 11 (1905).

55. The case was cited for that proposition in Prince v. Massachusetts, *supra,* note 22.

56. Similarly, a state university, acting with the authority of the state, may require all its students to take chest X-rays to detect cases of tuberculosis. State *ex rel.* Holcomb v. Armstrong, 39 Wash. 2d 860, 239 P. 2d 545 (1952). The requirement was upheld over Christian Scientists' objections on First and Fourteenth Amendment grounds.

57. People *ex rel.* Wallace v. Labrenz, 411 Ill. 618 (1952), *cert. denied,* 344 U.S. 824 (1952).

58. State v. Massey, 229 N.C. 734, 51 S.E. 2d 179 (1949), *appeal dismissed for want of a substantial federal question sub nom.* Bunn v. North Carolina, 336 U.S. 942 (1949).

59. Baer v. City of Bend, 206 Ore. 221, 292 P. 2d 134 (1956); *accord.,* Dowell v. Tulsa, Okla., 273 P. 2d 859, 43 A.L.R. 2d 445 (1954), *cert. denied,* 348 U.S. 912 (1955).

60. Hennington v. Georgia, 163 U.S. 299, 307 (1896).

61. N.Y. Penal Law §2147.

62. People v. Friedman, 302 N.Y. 75, 96 N.E. 2d 184 (1950).

63. Friedman v. New York, 341 U.S. 907 (1951).

64. Mitchell v. Pilgrim Holiness Church Corp., 210 F. 2d 879 (7th Cir. 1954), *cert. denied,* 347 U.S. 1013 (1954).

65. A church must also comply with municipal zoning ordinances. The exclusion of churches from areas zoned for single-family dwellings has been upheld as within the state's power to provide for the welfare of its residents. Corp. of Presiding Bishop v. City of Porterville, 90 Cal. App. 2d 656, 202 P. 2d 823 (1949), *appeal dismissed for want of a substantial federal question,* 338 U.S. 805 (1949). The court pointed out that a church may be undesirable to neighbors because of the large number of cars that it attracts and the noise from children's activities sponsored by the church. Since the church had reasonable alternatives of where it could build, the interest of residents in a single-family zone were given preference to that of the church.

30. 35 Stat. 1130 (1909), as amended, 18 U.S.C. §1341 (1952).
31. Schneider v. Town of Irvington, 308 U.S. 147, 164 (1939).
32. United States v. Ballard, 322 U.S. 78 (1944).
33. Pfeffer, *op cit. supra,* note 4, at 567.
34. Criminal sanctions may also be imposed on persons soliciting funds for pretended charitable or religious purposes with intent to deceive. *E.g.,* N.Y. Penal Law §934.
35. 322 U.S. at 86-7.
36. 344 U.S. 94 (1952).
37. The establishment aspects of the case will be considered below under the heading of Internal Church Affairs.
38. 344 U.S. at 119.
39. Reynolds v. United States, 98 U.S. 145 (1878).
40. 98 U.S. at 166-7.
41. Davis v. Beason, 133 U.S. 333, 342-3 (1890).
42. The Late Corporation of the Church of Jesus Christ of Latter-Day Saints v. United States, 136 U.S. 1 (1890).
43. 136 U.S. at 49.
44. Cleveland v. United States, 329 U.S. 14, 19 (1946).
45. 310 U.S. 586 (1940).
46. The pledge was in the usual form: "I pledge allegiance to my flag, and to the Republic for which it stands; one nation indivisible, with liberty and justice for all." 310 U.S. at 591.
47. 310 U.S. at 594-6.
48. West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).
49. 319 U.S. at 641.
50. 268 U.S. 510 (1925).
51. The constitutionality of state aid to parochial schools is discussed below.
52. 268 U.S. at 534. The New York law, for example, provides that teachers must meet certain requirements, ten basic subjects must be taught, and attendance records must be maintained. N.Y. Education Law §3204, §3211. This statute was upheld against attack from parents of children who attended a school where only Jewish religious subjects were taught. People v. Donner, 302, N.Y. 857 (1951), *appeal dismissed for want of a substantial federal question,* 342 U.S. 884 (1951).

table that the *Lonely Crowd* sociologists did not say clearly enough that "sincerity" may also take the place of truth or value, for that is the point: just as the defenders of "positive thinking" did not entertain the possibility that something millions endorse can be wrong or inadequate, so also they ignored the possibility that one can be "sincere" and at the same time be very mistaken.

Much of the contemporary criticism of "conformity," by the way, seems off the point, for it implicitly or explicitly recommends "individualism" or "autonomy" against the "crowd," when actually a relativistic individualism, exalting each man's opinion and desire, is the chief source of the "conformity." Essentially, the problem is not created by the individual's refusing to oppose the crowd; it is found in the individual's taking so little interest in discovering what is right. It is not that we Americans may have lost a sense of individuality; it is rather that we may lose a sense of the mind's connection with reality.

Tocqueville wrote well over a hundred years ago of the "tyranny of the majority" in America. Fifty years later Lord Bryce discussed it again, and added another chapter in which he got hold of a more subtle aspect of the thing. He called this the "fatalism of the multitude." The distinguishing feature is not the overt tyranny of the mass but the individual's inner disposition to accept the rule of numbers. Bryce explained how the necessary democratic assumption that the majority must prevail leads to another "less distinctly admitted, and indeed held rather implicitly than consciously, that the majority is right." He did not go on to make a further point, more relevant perhaps in our time than in his: the belief that the majority will choose what is right is easily converted into the belief that there is no such thing as "right," except as the majority decides it. Joining this belief is a counterpart found in individuals, the conviction that truth makes no claim upon one's mind, provides no standard; the only claim is provided by one's own interest or opinion.

These attitudes appear in discussions of television, motion pictures, and popular books. A suggestion that a consideration of taste or quality may make its claim brings the immediate response: "Well, who's to say? The public wants Mickey Spillane. Millions like it. Who are you to say they shouldn't?"

Politics also furnishes plentiful examples. Lord Bryce drew on the attitude of the American supporter of a defeated candidate to illustrate his point: the "losers," after an American election, hold less firmly to their position than they did before the votes were counted.

The point about "anti-intellectualism" is not so much that our campuses abound in "egghead" stereotypes or that the population has insufficient respect for college professors; rather, it is that the American does not have sufficient confidence in any intellectual grasp of reality, including his own. It is not that we do not have enough respect for other people called intellectuals; it is that we do not have respect enough for our own intellects.

Though the technological conditions of modern "mass" society have had much to do with creating this problem, it is basically a problem connected with the "free society," ancient or modern. Freedom requires a certain openness and toleration, but this openness may become an emptiness. Since we do not know what is going to be *done* until the votes are counted, we may come to believe that no one knows what is *good* or *true* until the votes are counted. Because almost all positions are equally free to present themselves, there is an inclination to believe that almost all positions are equally valuable and true. One man's opinion seems as good as the next, and implications to the contrary appear to be undemocratic. The desirable sense of relativity which the free society requires tends to turn into a thoroughgoing and debilitating relativism. The line between them is not easy to draw but runs somewhere between a healthy respect for other positions and the unhealthy assumption that all positions either are all on a plane and do not matter one way or another or are wholly

9. Cox v. New Hampshire, 312 U.S. 569, 574 (1941).
10. 340 U.S. 290 (1951).
11. 340 U.S. at 293. In Niemotko v. Maryland, *supra,* note 6, a licensing system was struck down even though it was not based on an ordinance but on an established practice. There Jehovah's witnesses had held Bible talks in a public park after being denied a license to do so. The Court found the licensing system arbitrary and discriminatory and held that it amounted to a denial of the Fourteenth Amendment right to equal protection of the laws in the exercise of the freedoms of speech and religion. Mr. Justice Frankfurter's concurring opinion in that case reviews all the important prior law in this area.
12. Lovell v. City of Griffin, 303 U.S. 444 (1938).
13. 310 U.S. 296 (1940).
14. 310 U.S. at 303-4.
15. Saia v. New York, 334 U.S. 558 (1948). But see Kovacs v. Cooper, 336 U.S. 77 (1949) which upheld a statute prohibiting all sound trucks on public streets.
16. Lovell v. City of Griffin, *supra,* note 12.
17. Marsh v. Alabama, 326 U.S. 501 (1946). The same doctrine was applied to a village owned by the federal government and operated for defense plant workers in Tucker v. Texas, 326 U.S. 517 (1946).
18. 345 U.S. 67 (1953).
19. Valentine v. Chrestensen, 316 U.S. 52, 55 (1942).
20. Jamison v. Texas, 318 U.S. 413, 417 (1943).
21. Cox v. New Hampshire, *supra,* note 9.
22. Prince v. Massachusetts, 321 U.S. 158 (1944).
23. *See* Martin v. City of Struthers, 319 U.S. 141, 148 (1943).
24. Jones v. Opelika, 316 U.S. 584 (1942).
25. 319 U.S. 105 (1943).
26. 319 U.S. at 115.
27. Follett v. Town of McCormick, 321 U.S. 573 (1944).
28. Martin v. City of Struthers, *supra,* note 23.
29. See Justice Murphy's concurring opinion in which Justices Douglas and Rutledge joined. 319 U.S. 141, 149.

1. U. S. Const. Amend. I.
2. U. S. Const. Amend XIV, §1.
3. Watson v. Jones, 80 U.S. (13 Wall.) 679 (1871), discussed below under the heading of Internal Church Affairs.
4. The issue came to the foreground as a result of President Truman's short-lived appointment of an ambassador to the Vatican. Those who contended that the appointment violated the First Amendment necessarily assumed that the Amendment applied to the executive as well as to the legislature. See Pfeffer, *Church, State, and Freedom,* 268 (1953).
5. On their face, however, these concepts do not appear to provide room for the prohibition of establishments in the states. The absence of a reference to establishments has been interpreted by some as authorizing state established churches provided they do not infringe on religious liberty. Corwin, "The Supreme Court as National School Board," 14 Law & Contemp. Prob. 19 (1949). The Supreme Court, however, has come to a different conclusion.
6. *E.g.* Everson v. Board of Education, 330 U.S. 1 (1947), discussed below under the heading of State Aid to Parochial Schools. The more logical vehicle would have been the privileges and immunities clause. Indeed that had been the intention of the framers of the Fourteenth Amendment. The earlier restrictive interpretation of the clause in the *Slaughter-House Cases,* 83 U.S. (16 Wall.) 36 (1873), however, had made this interpretation difficult. The courts have ignored the "due process" part of the clause and have not attempted to justify the deprivation of religious liberty *with* due process of law. *See* Pfeffer, *op. cit. supra,* note 4 at 129. Occasionally "equal protection" has been used instead of "liberty" as the vehicle. *E.g.,* Niemotko v. Maryland, 340 U.S. 268 (1951).
7. This question is discussed below under the heading of State Aid to Parochial Schools. The use of the phrase "state aid to religion" which appears in many judicial opinions is unfortunate. What is meant is aid to religious institutions. Any other interpretation makes the state appear slightly presumptuous.
   A definition of "religion" cannot be given at this point. To do so would assume the conclusion of what activities are protected by the First Amendment. As we shall see, it has been the function of the courts to define "religion" from case to case with each new fact situation.
8. Several examples of issues that have not been resolved by the Supreme Court are cited in the Conclusion.

matters of taste and background without any firm basis either in reason or in objective reality.

The problem is not, as it is sometimes put, the loss of "absolutes," whatever they are; it is rather the disappearance of trust in the proposition that the mind and conscience are capable of making any genuine discriminations at all.

Second, there is the problem of the utter pragmatism of our society. Practical and technical and functional questions are made the primary questions, and the larger ends and meanings of life are either obscured or falsified. We are notoriously inclined to emphasize the short-run, tangible, and quantitative at the expense of the long-run, intangible, and qualitative. The American sputternick, in the fall of 1957, furnished the illustration for many a homily on this point, but perhaps the weakness pointed up by that fiasco has not been wholly eradicated from the American character. Mr. Charles Wilson was sufficiently criticized for underrating basic scientific research —for saying, "Basic research is when you don't know what you are doing" and "I don't want any studies of why grass is green"—but perhaps the criticism stopped too soon. It is true that if one emphasizes applied science to the neglect of basic science, then in the end even the applied science will falter; but it is further true that if one emphasizes *science* to the neglect of the broader humanistic education out of which it may arise, then in the end even the science may be inadequate; and it is still further true that if one directly emphasizes *education,* as a means or technique, to the neglect of the larger problems of the ends of the society, then at the last even the education won't be very good.

Too direct and complete a commitment to the technical and practical, and to limited ends, is finally self-defeating, for clarity about larger ends must discipline, direct, and criticize technique. To be "efficient" or "practical" assumes some frame of values within which the "efficient" adoption of means to

ends takes place; if there is a mistake about the values, then no amount of practical "know-how" will save the situation. Finally, the practicality will fail to achieve even its own limited ends, for there is a certain interaction between the ends of living so that even the most immediate ones are not wholly divorced from the larger, more intangible ones.

Both our age and nation tend vastly to overemphasize, in Mannheim's terms, the "technical" reason that deals with the question *how* and to underemphasize the "substantial" reason that deals with the *why*. Dwight MacDonald in a *New Yorker* survey of "How-to" literature made the point that the material that dealt with tangible and immediate problems—how to build a bridge, how to bake a cake—was not bad, but when the same attitude was applied to Life and Philosophy and Religion (How to Live with Yourself; How to Find a Faith) the quality of the material dropped off rapidly. Part of the problem of How-toism is its assumption that the approach ("three easy, simple, practical steps") which may be sound in dealing with a tangible problem where the ends are limited, immediate, and unmistakable can apply also to the whole of life and thought. The remark someone made—that there is more wisdom exhibited by an eighteen-year-old American boy fixing his Ford than by the U.S. Senate debating foreign policy—may be true, because the Senate, and Americans generally, try to apply to the vast imponderables and complex values of foreign policy the same direct and practical approach the boy uses on his Ford.

The overly pragmatic society tends to overlook this fact: that technique tends to smuggle in, unexamined, its own answers to the larger questions of ends and meanings. The "How-to" and "Know-how" attitude is not just neutral about what the ends of living may be; it influences them downward toward the simple, tangible, and short-run, which fit in better with the requirements of practical activity.

This problem also has its decisive exemplification in the field of religion, which in popular and public discourse is

schools. Chaplains in Congress and the Armed Services are periodically criticized on First Amendment grounds. Can the state's condemnation power be used to benefit a Catholic university? A violent dispute resulted from the appointment of an ambassador to the Vatican. By far the greatest benefit that the state confers on religious institutions and one that can be said to violate the establishment clause is tax exemption.[126] The practice is so strongly embedded in our tax system that it is rarely thought to raise a constitutional question. These instances are but a few of the many that have not been resolved by the Court and may never reach it.

As for the merits of the controversy over the interpretation of the establishment clause, it may well be that logic impels the complete separation espoused by some of the Court's opinions. Regardless of the accuracy of this assertion, however, an insurmountable wall will never be erected for two reasons. First, there are many issues which nobody has the standing to raise. Thus the fact that the plaintiff is a taxpayer in a suit alleging that federal funds were expended in violation of the Constitution is in itself not enough to give him standing to raise the question.[127] He must suffer some more direct harm as the result of the expenditure.

Secondly, there are many instances of state participation in religious affairs, as illustrated by the foregoing examples, which are so firmly rooted in our tradition that the Court would not upset them. Depending on one's attitude, they may be classified as minor manifestations of the religious nature of our people or as incipient cracks that will cause the wall to tumble. It is probable that these instances violate the First Amendment even though no one has standing to raise them. Standing to sue is a convenient device, however, to enable the Court to dismiss some actions that it considers too insignificant.[128]

The record of the Supreme Court is easily criticized. Few religious sects have agreed with all that the Court has said and decided. Agreement is not to be expected, for it is the function of the Court to restrain the conduct of some individuals and groups so that they will be able to live side by side with maximum freedom for all. Through the vehicle of the free exercise clause the Court has provided a wide range of freedom to unpopular minorities. The establishment clause enabled the Court to formulate a philosophy of separation which, despite its occasional inconsistent applications, serves as the basis for the continuing co-existence of divergent religious sects.

The difficulty of the task and the vast responsibility placed on the Justices of the Supreme Court in this area, as in so many others, are apparent. The Court must define the sphere of permissible operation of federal and state governments, religious institutions and groups, and individuals. The emotion-filled nature of each new conflict makes any Court decision a target for some group.

Despite the multitude of issues and the frequent inconsistencies in the Court's language, certain patterns have evolved. The free exercise of religion has developed into a concept of wide scope. The religious freedom of individuals and groups has been restrained only in those rare cases where the needs of society would have been seriously prejudiced by unbridled freedom and where religious activities could reasonably be carried on at other times or under other circumstances.

The prohibition of establishments of religion has been extended far beyond the simple case of established churches. Some of the formulations of the justices writing for the majority of the Court have gone so far as to insist that the state may not participate in any religious activities, even though participation be nondiscriminatory. This extreme view has not been borne out by the decisions, however, even in the same cases that used this wide language.

Many issues remain unresolved by the Supreme Court. A few examples will serve to indicate that complete separation as formulated in some opinions will not become decisional law. In the free exercise realm, courts must frequently weigh religious considerations in deciding family problems. Adoption and custody of children raise religious issues when the adopting and the natural parents are of different religions, and a court may be called upon to decide between the material and spiritual welfare of the children. Another instance where the courts may be compelled to approve or disapprove religious doctrines is in testing the validity of legislation involving birth control.

Instances of state participation in church affairs that might be construed to violate the establishment clause are constantly met in daily life. References to God in public statements, in Thanksgiving Proclamations, and on the coinage raise constitutional questions in the minds of few other than students in this field. Occasionally, disputes arise over the celebration of Christmas in public

constantly justified in functional and practical terms. It fills prior needs. It performs useful services. Two social scientists, summarizing the contemporary "social malaise," write:

> Religion, the central chord of Western society, is today often justified even by its most zealous defenders on grounds of expediency. Religion is proposed not as a transcendent revelation of the nature of man and the world, but as a means of weathering the storms of life, or of deepening one's spiritual experience, or of preserving the social order, or of warding off anxiety. Its claim to acceptance is that it offers spiritual comfort. (Lowenthal and Guterman: *Prophets of Deceit.* Harper.)

In best-selling books, magazines, movies, television programs, and some popular preaching, religion is offered as a practical aid to the prior needs both of the self and of the society. For the self, there is the familiar blend of psychology and religion that offers practical steps to make life longer, higher, fuller, and possibly wider by the use of religion. The link between religion and America's tradition of self-help literature appears to be strong and continuing. "Success" is one of the main goals which religion of this sort is supposed to serve. More recently, along with the "success" theme, the self-help religion has been directed toward allaying inner anxieties and difficulties: peace of mind, peace of soul, peace with God. In any case the pattern is to take either perennial or current goals for granted, as the prior and determining aims of life, and to advocate religion as a useful means for attaining them.

A very common theme in contemporary religious literature is the recommendation of religion as the necessary support of the community's morality. How frequently, for instance, do we hear that religion is the answer to juvenile delinquency? In more sophisticated versions of this same argument religion is said to provide the necessary sanction and foundation without which the humane morality of the alert will collapse. What would your city be without its churches, the advertisements ask. Religion is held to be still more

directly of use to the national purpose in a military and political way. It is praised as a source of strength, a national resource, a great aid in the warfare with communism.

At some point the argument passes from the legitimate effort to show how a religious grasp of reality relates to all the needs and aims of living and turns into a dubious effort to justify religion by showing that it serves ends implicitly granted to be even more fundamental than the service of God. Even religion is recommended for services rendered.

Finally, there is the problem created by the drive toward a shallow and implicitly compulsory common creed. I have already mentioned the "fatalism of the multitude." For Bryce the individual's inner acquiescence to the rule of numbers was reluctant and fatalistic: men regard "the voice of the multitude as the voice of fate." But, today, that acceptance is often neither reluctant nor fatalistic, it is shamelessly eager. Ortega was perhaps too disdainful, too aristocratic when he painted his picture of the "mass man" (whom he assumed to be completely dominant in the United States); nevertheless there was a portion of truth in it. "The characteristic of the hour," Ortega wrote, "is that the commonplace mind, knowing itself to be commonplace, has the assurance to proclaim the rights of the commonplace and to impose them wherever it will." If we remove the condescension from the phrase "commonplace mind" and make sure to include ourselves in the proposition, we can admit its application to American free society.

Out of this aggressive role of the commonplace comes (among other things) a pressure toward a common national creed that is especially evident in the period of the contest with the rival Communist power. It is epitomized in the patriotic-religious pronouncements of the President and the Joint Chiefs' effort to formulate an ideology ("militant liberty") for us all.

The role of the government is difficult even in keeping out of religious affairs, in that refusal to act may be interpreted as preference of one religion. Justice Douglas states:

> "... we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence...."[121]

The school did not close its doors on all students. That would be "dismissed time" and undoubtedly constitutional.[122] Justice Douglas found no coercive effect on school children in the New York City program.[123] If indeed the children felt no coercion the case is properly distinguishable from *McCollum*, and the principle of the latter case still stands as law. The majority emphasized that it follows the *McCollum* case and does not modify it. Despite this assertion, the quoted passages from the opinion might serve to support a future holding that nonpreferential aid to religious education is valid.

Justice Black points to one difficulty inherent in non-preferential aid: State aid to all religious institutions requires a determination of what constitutes religion.[124] Justice Jackson indicts nonpreferential aid with these words:

> "The day that this country ceases to be free for irreligion it will cease to be free for religion—except for the sect that can win political power. The same epithetical jurisprudence used by the Court today to beat down those who oppose pressuring children into some religion can devise as good epithets tomorrow against those who object to pressuring them into a favored religion. And, after all, if we concede to the State power and wisdom to single out 'duly constituted religious' bodies as exclusive alternatives for compulsory secular instruction, it would be logical to also uphold the power and wisdom to choose the true faith among those 'duly constituted.' We start down a rough road when we begin to mix compulsory public education with compulsory godliness." [125]

It must be remembered, however, that although the dissenters label this released time program "nonpreferential aid," the majority found no aid at all and therefore no violation of the establishment clause. The case has not yet arisen where the Court framed the issue squarely in terms of the validity of nonpreferential aid. Should such a case arise, the proponents of nonpreferential aid will rely on some of Justice Douglas' language in the *Zorach* case and the holdings in the *Everson* and *McCollum* cases, but it may be that the strong statements for complete separation in the latter two cases will prevail.

a park than in a school. A child may be embarrassed if he is the only one not attending religious instruction, since everyone in school will know of his refusal. Attendance in a public park, however, is never compulsory; absence from a religious meeting will consequently not be noticed. Regardless of the paradox, the *McCollum* case states the law under the establishment clause and its exegesis of the high wall of separation remains law unless the wall was breached by the subsequent *Zorach* case.

The released time program upheld in the *Zorach* case was in large part similar to that of Champaign County. The essential difference of the New York City program was that religious instruction did not take place in the school buildings, but in churches or on other private property. No state funds were used in aid of the program.

The distinction of instruction inside and outside the school building appears weak to many including the three dissenting Justices.[119] The significance of the decision lies not so much in its judicial line-drawing, however, as in the language of the Court's opinion. Here some doubt is thrown on the continuing validity of the breadth of the standards promulgated in the *Everson* and *McCollum* cases. Speaking for the majority Mr. Justice Douglas stated:

> "... The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute. The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter. Otherwise the state and religion would be aliens to each other—hostile, suspicious, and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; 'so help me God' in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: 'God save the United States and this Honorable Court.'"
>
> ...
>
> "'We are a religious people whose institutions presuppose a Supreme Being....'" [120]

These efforts to formulate an explicit common creed have an implicit base in our society's "colossal liberal absolutism," as Louis Hartz calls it; in the pervasive "Americanism" that is a dynamic revision of classical liberalism; in our worship of the "democracy" that Will Herberg says is America's religion held in common; in the striking homogeneity of underlying popular philosophy in America. Part of the problem of this common creed is its naive assumption that its own claims are self-evident. It is deprived of both self-understanding and the ability to deal competently with contrary and alternative views. Mr. Eisenhower's breathtaking encounter with Marshal Zhukov's philosophy may serve as a symbol of it. The taken-for-granted quality in "Americanism" makes not only for an inarticulateness but also for a subtle kind of compulsion. It simply assumes without argument that we all agree on the tenets of a common faith.

This problem, too, is a most important reflection in the field of religion. The explicit or implicit common civic creed may *exclude* as it may *include* a "religious" element. In either case there is difficulty.

It may exclude religion as "divisive" or as separated by constitutional fiat from the common and public arena, thereby subordinating religious affirmation to a superior civic faith. One encounters rather often the attitude that the "creeds" or "sects" are peripheral and private and of only individual or family significance; they should not "meddle" in the public arena. The real faith of the society is "democracy," to which some may add a subordinate private religious creed if they want to. There is an inclination in educational circles particularly to develop a kind of common, national, public-school creed which rigidly excludes any theological concern as divisive and dangerous to "democratic" unity. Such a point of view is naturally offensive to the believer, for it misunderstands the necessarily transcendent and all-encompassing relevance of his beliefs.

But when, as is more usual today, "religion" is included in

the common creed, even more problems are created. Something is wrong when the President insists that democracy is founded on religion, when the school board makes "belief in God" a fundamental tenet of the American creed, or when citizens are made to feel the force of what a Supreme Court justice called "compulsory godliness." When men feel compelled to subscribe to religious affirmations they do not truly accept, the civil-liberties problem is plain enough. Failure on the religious side is important too. The kind of religion that results from this common civic faith is a religion-in-general, superficial and syncretistic, destructive of the profounder elements of faith. Part of what drops away is the note of judgment and, more broadly, the whole transcendent dimension of religious truth.

These problems are plainly and closely interrelated; in fact they overlap so much they are barely separable for my analysis. The practical and tangible emphasis of the society grows from the emphasis of the society on the relativism of the multitude: where the test of what is important, true, and right is made by counting noses, then what is shared by all, the most obvious, immediate, and practical aspects of life, come to the fore.

Though such problems are in large part the by-products of modern technology, and of the forms of social organization accompanying it, they cannot be wholly ascribed to that one cause. The nature of democracy itself—of the free society—cannot be completely absolved. It is with democracy-as-a-fact, with freedom-as-a-fact, that these problems begin.

Having set down these "problems," in a negative vein, I must now admit that they are closely related also to the merits of the free society. They remain problems because they are linked to the very nature of freedom.

The "relativism" that is destructive of truth is just over the line from the sense of tentative judgment which is required

have involved instruction in the doctrines of the sect to which the students belong. This is undoubtedly "religious" teaching.

The problem of when religious instruction takes place within the framework of the public school system was presented to the Supreme Court in the released time[112] cases: *McCollum* v. *Board of Education*,[113] and *Zorach* v. *Clauson*.[114] The *McCollum* case involved the released time program of Champaign County, Illinois. Children in public schools, with the consent of their parents, were released to receive instruction from clergymen in the religion of their choice for thirty minutes a week. The instruction took place in the school's classrooms. The Supreme Court held that the program violated the establishment clause. The chief objection to the statute was the pressure to attend religious instruction imposed on children through compulsory school attendance. It is true that the school gave parents the choice of having their children attend religious instruction or of continuing their normal studies. Without the program, however, attendance at religious instruction would have been substantially less popular, because the classes would have had to take place after school hours.

The Court also relied on the fact that public funds were used for religious instruction. The separate opinions of the majority of the Court reemphasized the view of the bus case that separation between church and state must be complete. Only Mr. Justice Reed dissented, on the ground that some minor governmental contacts with religious practices should be upheld. Mr. Justice Black delivered the opinion of the Court and stated:

> ". . . The operation of the State's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects. Pupils compelled by law to go to school for secular education are released in part from their legal duty upon the condition that they attend the religious classes. This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith. . . ." [115]

This interpretation of the establishment clause results in a curious inconsistency with the later construction of free exercise in the *Kunz* case.[116] In a public park religious proselytizing, even with loud speakers,[117] *may not* be prohibited through a licensing scheme, but in a public school room religious instruction *must* be prohibited.[118] One distinction may be that although attendance at religious classes is voluntary in both places it is more voluntary in

Court refused to pass on its constitutionality. The action was brought by a taxpayer who was also the mother of a child in public school. Before the appeal reached the Supreme Court the child had graduated from school so that the plaintiff no longer had standing to sue on this basis. The Court held that the plaintiff's interest as taxpayer was insufficient since it was not a "good-faith pocketbook action."[108] Until a case is presented on which the Supreme Court will rule, and this must presumably be brought by the parent of a child who is still in school when the case reaches the Court, there will be differences in practice from state to state.

3. *Released Time.* The history of education in this country shows an evolution from teaching oriented toward religion in colonial days to the secular public schools of today.[109] The reason for this development was articulated by Mr. Justice Frankfurter:

> "... The secular public school did not imply indifference to the basic role of religion in the life of the people, nor rejection of religious education as a means of fostering it. The claims of religion were not minimized by refusing to make the public schools agencies for their assertion. The non-sectarian or secular public school was the means of reconciling freedom in general with religious freedom. The sharp confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered. Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously free from entanglement in the strife of sects. The preservation of the community from divisive conflicts, of Government from irreconcilable pressures by religious groups, or religion from censorship and coercion however subtly exercised, requires strict confinement of the State to instruction other than religious, leaving to the individual's church and home, indoctrination in the faith of his choice."[110]

This statement raises two problems: (1) When is a subject taught in the public school system and when is it taught outside the system? (2) What instruction is "religious" so that it may not be taught in the public schools? The concern of the Supreme Court has been with the first question, and this will form the subject of the present discussion. An adequate answer to the second is difficult to formulate and even more difficult to apply. Since the Court has not been presented with the question, it is beyond the scope of this analysis.[111] The cases that have reached the Supreme Court

if a democratic nation is to remain free and just. Freedom-loving peoples have rightly learned to fear the blunt assertion that Truth and Goodness are readily recognizable, because they have learned from sad experience that behind such an assertion may be the clenched fist of compulsion. People who are a bit too sure that they know what is true or what is good for others, or who lack a sense of the frailty of their own ideas, are often altogether too willing to enforce their views on other people. A sense of the legitimacy of difference of opinion, openness of mind, tolerance, and self-criticism are all required by the free society and are among its greatest virtues.

Similarly, the emphasis on the practical is no unmitigated fault. It, too, is part of the genius of American society. Again, the fault is the overextension of the virtue, so that it is not kept in place and regulated by contrary and qualifying considerations.

A certain unity of social and political premises is also necessary to the free society. This unity has been described as the strength of American politics; a foreign observer like Gunnar Myrdal is struck—favorably—by the unified adherence to an "American creed," a common social ethic, by which a problem like segregation can be measured.

In each case the logic of the free society requires a delicate balance, to preserve its own characteristic merits without falling into its characteristic errors.

The critics of democracy always said it would tend to lose its standards, truths, and qualities. We democrats rejected their argument, partly because we disagreed with the aristocrats as to what was true and valuable, partly because we saw that the democratic picture on this count was not altogether dismal but mixed, partly because we were convinced that however bad democracy would turn out to be, every alternative social order would be worse; and most importantly because for us no other "value" really could outrank that of the person, whom freedom protects. In order to minimize servility, caste, coercion, and injustice we would gladly have

taken a cultural loss if we had to; we would willingly have sacrificed some of the beauty, "truth," "goodness," and power of our society. If eliminating deference to aristocrats also meant a certain diminution of the deference due to intellect and talent, then we would have put up with that too. But though we have never admitted such choices were necessary, we may now be forced to acknowledge that the problems suggested by the aristocrats are real enough.

Now, what is the relation of these aspects of our culture—our whole "way of life"—to the religious tradition of the country in the narrow sense? At first one may say that religion in America is simply the victim, along with everything else, of the pressures of modernity. But then one would have to add that something in its nature made the dominant religious community in America a likely victim of that modernity. And one would have to add, further, that this religious community even helped in some small measure to *create* those "modern" pressures.

But, when all that was said, one would have to add that in America's central religious tradition a resolution of the problems faced by the free society may be found.

To explain such an assertion we need a swift summary view of religion in America. Some may object that no further characterization of American religion is possible after one has said that it is manifold and diverse. Visitors from lands with a tidier religious situation, and observers for whom religion is a rather unpleasant subject anyway, often tend to speak disparagingly of the multiplicity of our "sects," as though the multiplicity itself were about all that could be observed. But religion in America does have a distinctive shape. Despite all its varieties, there has been a kind of a main thrust of religion in America that (for good or ill) has had a powerful impact on national attitudes.

This main thrust has been that of Puritan Protestantism

These words proclaim the wider of the two interpretations of the establishment clause: namely, that even nonpreferential aid is prohibited. The proponents of this view, however, disagree with Justice Black's application of it to the facts and claim that the decision represents a breach in the wall.

Mr. Justice Jackson's dissenting opinion objects to the statute on the ground that it does not treat all schools equally in that it omits children in schools run for profit. Furthermore, he contends that the payments benefit private institutions which may not be supported by public funds. He states:

> "But we cannot have it both ways. Religious teaching cannot be a private affair when the state seeks to impose regulations which infringe on it indirectly, and a public affair when it comes to taxing citizens of one faith to aid another, or those of no faith to aid all. If these principles seem harsh in prohibiting aid to Catholic education, it must not be forgotten that it is the same Constitution that alone assures Catholics the right to maintain these schools at all when predominant local sentiment would forbid them. *Pierce* v. *Society of Sisters,* 268 U.S. 510. Nor should I think that those who have done so well without this aid would want to see this separation between Church and State broken down. If the state may aid these religious schools, it may therefore regulate them. Many groups have sought aid from tax funds only to find that it carried political controls with it. Indeed this Court has declared that 'It is hardly lack of due process for the Government to regulate that which it subsidizes.' " [106]

Mr. Justice Rutledge's dissent makes a detailed study of the history leading up to the adoption of the First Amendment. He refuses to characterize the statute as welfare legislation and states that the cost of transportation is part of the cost of education.

The child benefit doctrine of the decision remains the law of the land and is relied on by those who favor nonpreferential aid to education. Curiously enough the sweeping language of the majority opinion also serves as a basis for the arguments of those who would build the wall high and prohibit all aid.

2. *Bible Reading.* Numerous states have adopted statutes requiring or permitting teachers in public schools to read a few verses from the Bible each day and in some instances to recite the Lord's Prayer. The statutes have been attacked in several states and more frequently than not have been upheld. The New Jersey statute is the only one that reached the Supreme Court.[107] It had been upheld by the highest court of New Jersey, but the Supreme

into the shaping of the "whole way of life" of the American people. Peter Drucker, noting the unique co-existence here of a secular state and a religious society, and the absence of any anti-religious connotations to the idea of the secular state, wrote recently that "the relationship between religion, the state, and society is perhaps the most fundamental—certainly it is the most distinctive—feature of American political as well as American religious life." He might have gone on to identify the underlying spirit upon which this whole structure is built: the spirit of freedom in religion. The free-church tradition not only rejects coercion in religion and interference by the state; it also puts emphasis on the individual's permeating society by voluntary religious efforts which persuade the individual heart.

The many revivals that have crossed and recrossed this nation represented, and added to, something basic in America's religious character. One of our religious traditions is built around the warm and vigorous appeal to the heart and will in conversion, revival, moral exhortation, and missionary expansion.

This evangelical spirit has its own way of "shaping" the culture, quite different from that of Mr. Eliot's Church of England, and different indeed from almost any other example found in religious history.

The relation of religion to society in America is neither that of the "sect" nor that of the "church;" it is something new. Though the "sect" element is very important, the main stream of religion here has not emphasized repudiation of the principalities and power of this world or withdrawal from society in order to preserve ethical purity and holiness. Though the New England Puritans were as intense about Christianity's affecting all of culture as anyone, neither is the main thrust in America that of the "church" which compromises with the powers of the world in order to tame them within its embrace. The remarkable image one gets in American Protestantism is rather of a combination of both. It has

differently by the present Court, but until such conjecture passes into the realm of adjudication, the case remains law.

STATE AID TO EDUCATION

The effect of the establishment clause on state aid to education is probably the most controversial issue involving religion that has been decided by the Supreme Court in recent years. The majority, concurring, and dissenting opinions in this area present the problems in detail. They make careful studies of prior cases involving both the free exercise and establishment clauses and the history of the adoption of those clauses. The cases serve as a useful review of the matters discussed so far.

Although the Supreme Court has spoken on the constitutionality of state aid to education, the statements, even of the majority of the Justices, are not always in harmony. Predictability is still elusive. This discussion will not attempt to evaluate the conflicting views; rather we shall state what those views are and where the majority of the Supreme Court appears to stand.

1. *State Aid to Parochial Schools.* We have seen that the state may not prohibit parents from sending their children to parochial schools.[100] This in itself might be considered a form of state aid. More properly it is interpreted as imposing a duty on the state not to interfere in religious matters.

One of the questions that the Court will ask in testing the constitutionality of state aid is whether the resultant benefit is to schools or to schoolchildren. This may appear to be a distinction without a difference. The chief purpose of any good school is to benefit the students. Another purpose that a parochial school may have is to "aid" a church, although such aid is not of a direct financial character. The distinction between benefit to schools and to children was drawn in the *Cochran* case.[101] There legislation was upheld which provided for the distribution of non-sectarian textbooks without charge to children in all schools including parochial schools. The case arose before the First Amendment had been read into the Fourteenth. The Court held that the statute did not provide for the use of public funds for a private purpose in violation of the Fourteenth Amendment due process clause.[102]

In pointing out that schools did not benefit from this program, the Court emphasized that schools neither received any funds nor

This religious tradition is bound in with the other fundamental American forces, liberal democracy and capitalism, and is responsible along with them for the dynamic and individualistic virtues of the society. Here a "free" society has burst the bonds of static forms of authority, tradition, and hierarchy, and has built a productive capitalist engine, a viable democratic polity, a voluntaristic religion. Such American virtues as productivity, vitality, hopefulness, and self-respect are the product of these forces. One of the greatest of all American virtues, our native idealism, charitable friendliness to neighbor and stranger, and the extension of that idealism into a passion for social reform, is most obviously and centrally traceable to the free-church tradition. The virtues of that tradition are many, are real, and are unmistakably American.

But just because it is deeply imbedded in the American pattern of values that it helped to make, the tradition has a hard time getting outside it. Because it tends to imply, and to adopt from the surrounding liberal society, an individualistic and voluntaristic social philosophy (taken for granted rather than argued about), it is not well-equipped to notice the possible opposite action: that, in its effort voluntarily and persuasively to "permeate" society with religion, it in its turn may be permeated by the secular dynamism.

As the society becomes more complex and more secular, that opposite action may become more and more important. The religious tradition that once penetrated and helped to form the substance of the culture may now tend to be the passive party, reflecting values which are determined by other cultural forces. It may have little leverage to criticize, challenge, or alter a society in which it is so very much at home.

But, whatever their actual part in contributing to the contemporary problems of freedom, the religious communities hold within their affirmations a potential resolution of them. They do so because, in principle, they look to a dimension

> ". . . Under such a standard the most careful and tolerant censor would find it virtually impossible to avoid favoring one religion over another, and he would be subject to an inevitable tendency to ban the expression of unpopular sentiments sacred to a religious minority. Application of the 'sacrilegious' test, in these or other respects, might raise substantial questions under the First Amendment's guaranty of separate church and state with freedom of worship for all. However, from the standpoint of freedom of speech and the press, it is enough to point out that the state has no legitimate interest in protecting any or all religions from views distasteful to them which is sufficient to justify prior restraints upon the expression of those views. It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications, speeches, or motion pictures." [Footnotes omitted] [94]

While both decisions guard against state action that may discriminate among different religions, a comparison of the language of the opinions reflects the changed philosophy of the Court.

INTERNAL CHURCH AFFAIRS

If called upon to give an example of those affairs that are clearly not Caesar's, the first that comes to mind is the administration of a church.

The Civil War and the conflict over slavery caused schisms in several churches. A controversy where each of two factions demanded the right to possession of church property reached the Supreme Court.[95] This case establishes the principle that a dispute over possession between contestants within the same church must be decided by the tribunal created by the church for that purpose. A court is bound by the determination and may not interfere with it. The issue must be resolved on the basis of ecclesiastical doctrine, which does not lie within the competence of the state. The Supreme Court limited the power of the judiciary:

> ". . . The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious

than education. Thereafter we shall deal with the controversial subject of religion and the schools.

STATE PARTICIPATION IN CHURCH AFFAIRS

Over the years the Court has demonstrated an interesting change in attitude toward the relationship of civil and ecclesiastical affairs. This is not as evident in the decisions of the cases as in the language that the Justices have employed to arrive at those decisions. In 1844, for example, a case presented the issue of the validity of a bequest establishing a school in Philadelphia for orphans on the conditions that no minister of any sect hold office in the school or enter on the premises.[88] The purpose of the restriction as stated by the testator was ". . . to keep the tender minds of the orphans . . . free from the excitement which clashing doctrines and sectarian controversy are apt to produce."[89] The Court upheld the bequest against the claim that it was hostile to the Christian religion as incorporated into the common law of Philadelphia. Mr. Justice Story referred to the religious liberty provisions of the Pennsylvania Constitution[90] in the following words:

> ". . . Language more comprehensive for the complete protection of every variety of religious opinion could scarcely be used; and it must have been intended to extend equally to all sects, whether they believed in Christianity or not, and whether they were Jews or infidels. So that we are compelled to admit that although Christianity be a part of the common law of the state, yet it is so in this qualified sense, that its divine origin and truth are admitted, and therefore it is not to be maliciously and openly reviled and blasphemed against, to the annoyance of believers or the injury of the public . . .
>
> "It is unnecessary for us, however, to consider what would be the legal effect of a devise in Pennsylvania for the establishment of a school or college, for the propagation of Judaism, or Deism, or any other form of infidelity. Such a case is not to be presumed to exist in a Christian country; . . ." [Citations omitted][91]

Regardless of the accuracy or the meaning of the statement that Christianity was part of the common law,[92] it is evident that the common law was superseded in this respect by the First Amendment to the federal Constitution.

A century later the Court held that the New York statute which authorized a banning of "sacrilegious" films violated the free speech and press provisions of the First Amendment.[93] Mr. Justice Clark speaking for the Court made this statement:

> beyond the unities of a society, beyond the immediate and practical aims, and beyond the opinion and interest of individuals and crowds. Not only the religious communities but also the general membership of the free society might have a certain stake in the retention, restatement, and recapture of that transcendent dimension, for something like it is necessary if a society is to recognize the claims of both truth and liberty without allowing either to destroy the other.

ESTABLISHMENT OF RELIGION

"Congress shall make no law respecting an establishment of religion . . ." Whether this clause is subordinate to the protection of free exercise of religion or the two clauses were adopted to accomplish different ends, there is no question that some relation exists between them. Many cases involving religion and the First Amendment do not specify whether one or both clauses form the basis of the decision.[85] Frequently, one situation raises both establishment and free exercise issues. Separation of the concepts may at times be academic. For purposes of analysis, however, it is helpful to discuss the clauses separately.

While there is general agreement on the range if not the details of the free exercise clause, there is still strong disagreement as to the proper scope of the establishment clause. The Supreme Court decisions in the establishment field have been few in number but have usually resulted in lengthy opinions by different members of a divided Court. Not only is there public disagreement on the unresolved issues, but some of the issues that have been "resolved" by the Supreme Court are still controversial.

The difficulty stems from the elastic nature of the clause. The critical word is "respecting." History has demonstrated that the elasticity found throughout the Constitution has preserved its adaptability to unforeseen problems. The Supreme Court as interpreter of the Constitution is responsible for drawing the lines.

Much dispute has arisen from the assertion that the establishment clause built "a wall of separation between church and state."[86] The phrase was first used by Jefferson in a letter to the Danbury Baptists Association in which he wrote:

> " 'Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between church and state.' "[87]

We will deal here with the Supreme Court's interpretation of the clause. The object will be to determine the status of the law. We shall first consider government participation in church affairs other

country. And recurring to the opinion that bars this applicant's way, I would suggest that the Quakers have done their share to make the country what it is, that many citizens agree with the applicant's belief and that I had not supposed hitherto that we regretted our inability to expel them because they believe more than some of us do in the teachings of the Sermon on the Mount." [79]

These memorable words underlie the *Girouard* decision,[80] which reversed the above three cases. The *Girouard* case involved a Seventh-Day Adventist who told the examiner at the citizenship hearing that he was not willing to take up arms in defense of the country because of his religious beliefs. The Court based its decision admitting the applicant to citizenship on the wording of the Nationality Act of 1940,[81] which is in substance the same as the Act of 1906. The Court found that since there is no mention of bearing arms in the act, this requirement could not be read in without ". . . an abrupt and radical departure from our traditions . . ." [82] While the decision is not based directly on the First Amendment, the Court defined our "traditions" in terms of the freedom of religious belief.

An issue related to the admission to citizenship was decided in the case of *In re Summers*.[83] There Illinois refused a conscientious objector admission to the Bar because of his unwillingness to take the required oath to support the Illinois Constitution. The only reason for refusing to take the oath was his belief in nonviolence. The Supreme Court upheld the Illinois court. Mr. Justice Reed's opinion for the Court points out that while a law which prohibits a religious group from following a particular calling would be violative of the Fourteenth Amendment, the action of the Illinois court had no discriminatory motivation. Mr. Justice Black, who was joined by three other Justices, pointed out that, regardless of the motives of the Illinois court, the effect was to disqualify all true Quakers from the practice of law in Illinois. The strength of this case as precedent today may be questioned, especially since the majority relied on the older citizenship cases that have since been overruled. In view of the changed attitude of the Court the case may well not be followed in the future.[84]

by William Clancy

RELIGION AS A SOURCE OF TENSION

In spite of the identifications popularly made between "Americanism" and godliness, serious tensions between the secular and the religious exist in the United States today. They arise in politics, in education, and in the arts. They involve issues of law, freedom, and justice. Beneath their particularities, they possess a certain unity. They raise a basic question: What should be, what *can* be, the relationship between religion and the civil society at the present time?

The tensions we now feel are only a chapter in the long and probably endless history of tensions between religion and the world. This religious-secular confrontation has never been easy, nor can it be. A society from which such tensions were absent would be a dead society—one reduced to the soulless "unity" of some totalitarianism.

It is the vocation of religion to criticize and transform each of the secular order's historical manifestations, and this is not a vocation to which the secular order very easily conforms itself.

Though tensions between the secular and the religious are inevitable, the forms they take and the resolutions they demand vary from age to age and from society to society. An analysis or a prescription valid for one time and place may be quite meaningless for another. Between principles valid for all societies and the resolution of tensions within any given society there falls the shadow of the historical, the contingent, the possible. The present situation in the United States exemplifies this.

This situation is dense with complexities. To deal with it one must respect ambiguities. For instance, the American tradition, which in part grew out of the classic Judeo-Christian tradition of the West, owes almost as much to the rationalist tradition that grew out of the Enlightenment—and the two together as they are found in America did not simply add up to an amalgam of seemingly contradictory traditions; they produced something unique, something conditioned in a special way by America's own history.

The American tradition is not simply the Judeo-Christian tradition tempered by secular humanism; nor is it simply the secular-humanist tradition deepened with theology. One cannot describe it, or prescribe for it, through a simple historical or philosophical appeal to one or the other of these traditions. The American society can be accurately described, and prescribed for, only in terms that are unique to its own evolution and genius.

regents of the university, under the authority of the state constitution, directed all students to take a course in military science and tactics. In upholding the order the Court emphasized that attendance at the university is voluntary. Justice Cardozo's concurring opinion, in which Justices Brandeis and Stone joined, refers to the students in these terms:

> ". . . If they elect to resort to an institution for higher education maintained with the state's moneys, then and only then they are commanded to follow courses of instruction believed by the state to be vital to its welfare. This may be condemned by some as unwise or illiberal or unfair when there is violence to conscientious scruples, either religious or merely ethical. More must be shown to set the ordinance at naught. In controversies of this order courts do not concern themselves with matters of legislative policy, unrelated to privileges or liberties secured by the organic law . . ." [74]

There is some inconsistency in approach between the federal government's and California's attitude toward conscientious objectors, but constitutionally the acts of both legislatures must be given validity, since each operated within its own sphere.

The unwillingness to bear arms based on religious belief has also been involved in cases of aliens applying for citizenship. These decisions serve as another example of the change in attitude of the Court over the years. In several cases decided in 1929 and 1931 the Court interpreted the Naturalization Act of 1906, which required an applicant for naturalization to declare under oath that ". . . he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and will bear true faith and allegiance to the same." [75] The Court construed the oath to mean that an applicant must be willing to bear arms in support of the United States if called upon to do so. As a result citizenship was denied to a pacifist who was morally opposed to war [76] and to persons whose religious beliefs prohibited them from bearing arms.[77] The Court was sharply divided,[78] and Mr. Justice Holmes expressed the view that was accepted by the majority of the Court twenty-five years later when he declared:

> ". . . if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate. I think that we should adhere to that principle with regard to admission into, as well as to life within this

if not legally justified in ignoring minimum-wage requirements with their recognized social desirability.[65] Similarly, it would appear that Social Security coverage,[66] Workmen's Compensation,[67] and Unemployment Insurance[68] should be available to lay employees of religious institutions.

2. *National Defense.* The federal government may infringe upon religious liberty for the sake of national defense. The security of the country takes precedence over all First Amendment freedoms. The simple justification for this sweeping doctrine is that if a foreign power should attack this country, the lives, to say nothing of the freedoms, of all of us would be in jeopardy. The application of this concept to clashes between religious convictions and national security is less simple.

The problem is clearly illustrated by laws providing for compulsory military service. In the *Selective Draft Law Cases*[69] the Supreme Court upheld the constitutionality of the World War I draft law. The law contained an exemption from service for ministers of religion and members of certain religious sects whose tenets exclude engaging in war. The exemption was challenged as state interference with religion. The Court refused to discuss this contention because "its unsoundness is too apparent to require [more than its statement]."[70] The law would also have been upheld without the exemptions. Congress may draft persons with religious scruples against military service.[71] The exemption for conscientious objectors is a matter of legislative grace, not constitutional necessity. Congress may be motivated by respect for the religious convictions of individuals and also by the realization that the morale of those who do serve will be higher if they do not have to associate with conscientious objectors.

While exempt from bearing arms, conscientious objectors have been required to serve their country in some other capacity. The exemption may be as narrow or wide as necessary for national security. Thus Congress may also impose criminal sanctions on persons who refuse to register for the draft or who seek to convince others not to register, even though such conduct is motivated by religious convictions against military service.[72]

The privilege of conscientious objection was further limited in *Hamilton* v. *Regents of the University of California,*[73] which held that a state university may expel a student who refuses to take reserve officer training on account of religious convictions. The

The question of the "American consensus" is a crucial case in point. In some sense, we Americans are probably the "religious people" that Mr. Justice Douglas thinks we are.* Certainly, as a matter of history, we have assumed the existence of a moral order—and we have identified it as part of God's order in the world. But statements like this or dictums like Justice Douglas' are the most general of observations. They resist precision. Most attempts to move from their general validity to an application in the practical affairs of the community prove divisive.

I would say that we are a "religious people" only in the sense that we are a "reverential" people who have escaped the dogmatic *anti*-religion which has infected large portions of European society. But the "religion" that is accepted as a part of our public life is largely a matter of good fellow-

*"We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for a wide variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of the government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe. Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence. The government must be neutral when it comes to competition between sects. It may not thrust any sect on any person. It may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction."—*Zorach* v. *Clauson,* 1952.

ship and good works; it is certainly distrustful of particular theological dogmas. Above all, it is distrustful of ecclesiastical authority. Rather than providing a basis for unity in our society, therefore, efforts to introduce any specific, dogmatically grounded religion into public life usually lead to frustration and ill-will.

A fortiori, the same may be said regarding the philosophical tradition, the natural-law tradition, which the courts have in our century reaffirmed as the perennial basis for democratic institutions and laws. Some sort of consensus may still exist here, but it is a continually narrowing consensus. The courts themselves, in the very acts of affirming the natural-law tradition (as in recent decisions on obscenity), have recognized the rigidly limited areas in which it can be legally applied. Law, though it has an educative role to play, does not create values in the community, or even, in the long run, preserve them. Successful laws reflect the values the community actually cherishes. Public applications of our natural-law tradition, therefore, cannot move beyond the agreements that still exist in the community. Under the blows of modern scepticism, agreement on general principles, whether moral or philosophical, is a diminishing thing. This is one of the most serious problems bedeviling the relations between religion and the secular society today.

Central to the religious-secular problem in the United States is the problem of modern man, whose sensibility has been fractured, whose certitudes have been undermined. If, as Nietzsche said, the non-believer, the "modern man," has not yet realized what it means to be non-Christian, it seems fair to add that only rarely has the Christian man of modern times realized what it means to be modern. In this double failure we may find the basis for many of the religious-secular problems of our time and place.

I do not intend to suggest any practical solutions for these

> be said of the whole catalogue of duties specified in the Ten Commandments. Those of them which are purely and exclusively religious in their nature cannot be, or be made civil duties, but all the rest of them may be, in so far as they involve conduct as distinguished from mere operations of mind or states of the affections. Opinions may differ, and they really do differ, as to whether abstaining from labor on Sunday is a religious duty; but whether it is or is not, it is certain that the legislature of Georgia has prescribed it as a civil duty . . ." [60]

Even though their dominant purpose is civil, the laws also buttress most Christian faiths. When the doctrines of a particular church require that another day in the week be kept free from work, the members of that church are economically penalized by being forced to refrain from work on two days a week. This is not state interference with religious activity, because it does not, for example, require Orthodox Jews to work on Saturdays. The laws affect the economic rather than the religious well-being of such people.

The laws frequently make exceptions for Sabbatarians. The New York Sunday law, for example, provides that certain work is illegal on Sundays, but that those who regularly observe another day of the week as a holiday may work on Sundays.[61] In affirming the conviction of two Jewish retailers who sold kosher meat on Sunday, the highest court of New York has construed the exception to apply only to laborers and not to those engaged in selling.[62] An appeal to the Supreme Court was dismissed for want of a substantial federal question.[63]

This decision has definite effects on various religious groups. The limited exception for Sabbatarians cannot be justified on grounds of health, unless it is healthier to rest on Sundays than Saturdays. The result of the statute is to place those Sabbatarians who do not come within the exception at an economic disadvantage as compared to competitors who observe Sundays.

When a religious institution engages in business activities of the type carried on by commercial enterprises, it becomes subject to legislation designed to promote the health and welfare of employees. Thus the Fair Labor Standards Act with its minimum wage requirements was applied to a church which operated an interstate printing business.[64] The contention of the church that such an application violated the free exercise clause of the First Amendment was rejected. Indeed, it is difficult to conceive how a church engaged in a commercial undertaking could feel morally

would have resulted in her death or irreparable mental injury unless a transfusion were given. The court appointed a guardian who consented to the transfusion and then returned the child to her parents' custody.

Whether the principle of this case would be applied against an adult who for religious reasons refuses to take steps to save his life is open to question. By analogy a state court has upheld legislation prohibiting the handling of poisonous reptiles if it endangers public health and safety, in applying an ordinance against a religious cult whose practices included snake handling.[58]

The recent struggle by communities that have sought to add fluorine to public water to reduce tooth decay has also involved a religious issue. Christian Scientists have been opposed to fluoridation. While tooth decay is neither communicable nor as difficult to cure as smallpox or tuberculosis, fluoridation is a medically feasible way of reaching the largest number of people. The objection on religious grounds was rejected in a state court,[59] and it is likely that the Supreme Court would arrive at the same conclusion based on the state's power to protect the health of its inhabitants.

A regulation that is today justified on grounds of public health had its origin in religion. This is the Sunday law. Laws forbidding work on Sundays date back to colonial days, when they were strictly enforced to insure maximum church attendance. Gradually the religious significance of the laws declined, so that they are now regarded as measures necessary for the health and welfare of all.

When faced with the problem of whether Sunday laws are religious in nature, courts invariably answer that, regardless of their origin, they are now civil requirements. This was already stated by the Supreme Court in 1896 when it upheld a Georgia statute prohibiting the operation of freight trains on Sunday:

> ". . . Courts are not concerned with the mere beliefs and sentiments of legislators, or with the motives which influence them in enacting laws which are within legislative competency. That which is properly made a civil duty by statute is none the less so because it is also a real or supposed religious obligation; nor is the statute vitiated, or in any wise weakened, by the chance, or even the certainty, that in passing it the legislative mind was swayed by the religious rather than by the civil aspect of the measure. Doubtless it is a religious duty to pay debts, but no one supposes that this is any obstacle to its being exacted as a civil duty. With few exceptions, the same may

problems. I merely hope to indicate what they are. But before proceeding any further, I should state that the "Church-State" question in the United States seems merely accidental—almost peripheral—to the real problem. This fact is both a blessing and a bane. It spares us many of the conflicts that still divide less fortunate nations in Europe; but it leaves us with other quandaries which are perhaps even more difficult to resolve because they are almost infinitely more complex. The classical Church-State issue, as it has traditionally been drawn in older Western societies, can be formulated; it yields to a principled analysis. The problem of religion in the free society of America is more elusive. It is a mixture of historical and psychological ambiguities that cannot be easily sorted out. These ambiguities give rise to whatever "Church-State" problems we have.

The difficulties, in a word, lie more in our evolving society than in our laws. Legally, constitutionally, we are a uniquely fortunate nation. In the State which our Founders established, the civil and religious orders were clearly distinguished; they were not set in opposition to each other. In the words of Father John Courtney Murray, "There is [in the United States] a unique historical realization of the 'lay' State—unique because this lay State is not laicized or laicizing on the continental model. [It] does not pretend to be The Whole—an absolutely autonomous, all-embracing religio-political magnitude with its own quasi-religious content . . . On the contrary, there is in the First Amendment a recognition of the primacy of the spiritual—a recognition that is again unique, in that it is a recognition of the primacy of the spiritual life of the human person as a value supreme over any value incorporated in the State . . ."

For one who accepts (as I do) the validity of this analysis, the "wall of separation" metaphor is an unfortunate and inexact description of the American Church-State situation. What we have constitutionally is not a "wall" but a logical distinction between two orders of competence. Caesar recog-

nizes that he is only Caesar and forswears any attempt to demand what is God's. (Surely this is one of history's more encouraging examples of secular modesty.) The State realistically admits that there are severe limits on its authority and leaves the churches free to perform their work in society. The only inhibition implied in the First Amendment is that, in performing their work, the churches must not violate the very charter by which their own freedom is granted. They must not, in the free society, make demands that the society cannot sustain.

The implications here are clear and, for organized religion, troublesome. Just as the American government is a voluntarily self-limiting government, so the churches, whatever their theological claims are, *in terms of their public role in the American society* must regard themselves as self-limiting. A Church may be absolutely sure of its own mandate and spiritual authority, yet it cannot publicly act as though that mandate and authority were generally accepted by the civil society. Forms of religious behavior or assertions of religious power that in theological terms may be quite logical and just, or in other societies, in other times and places, might even have been expedient, become dangerously imprudent in the pluralist society that is America. Many of the specific "Church-State" controversies we face today result more from a failure to realize this fact in practice than from any violation of constitutional principle.

The "wall" of separation between Church and State, as it is conceived by most "absolute separationists" in America, is not really a constitutional concept. It is rather a private doctrine (of militant secularism in some cases, of one version of Christian theology in others) which a minority of Americans seem intent on imposing on all. Many of the battles that now rage over "Church-State" issues tell more about the growth of dogmatic secularism in our society than they do about the Constitution. They may be argued in juridical language but are firmly rooted in the dogmatism of a sect

can generally be placed into one of the two categories of public health and national defense.

It is of vital interest to society that its members be free from disease. To that end the state may require preventative measures or treatment that may result in a conflict with the religious beliefs of some sects. The state may also protect public health by regulating working conditions within its borders.

National defense is of paramount importance to society. Religious convictions must give way to that end. Conflict with religious freedom arises when the state adopts compulsory military service and when it exacts the promise from individuals to serve in the military forces if called upon as a requisite to granting certain privileges.

1. *Public Health and Welfare.* The state has power to protect all persons within its borders from dangerous communicable diseases. This had already been recognized before the protection of free exercise of religion was applied to the states through the Fourteenth Amendment. In *Jacobson* v. *Massachusetts*[54] compulsory vaccination was upheld. Although the case makes no mention of religious liberty, it was subsequently relied on for the proposition that the state's power to take preventative measures against communicable diseases may supersede a claim of interference with the free exercise of religion.[55] The interest of the state is to prevent the spread of smallpox.[56] It is arguable that since anyone can be vaccinated without pressure by the state, those who are not vaccinated assume the risk of disease. If a person who was not vaccinated contracts smallpox he will pass it on to those who also failed to have themselves vaccinated. Regardless of the medical accuracy of this contention, the state may protect those who are unwilling to protect themselves. The reason takes us to one of the philosophical bases of our society—the preservation of human life. This is considered superior even to the free exercise of religion.

The state takes a particularly protective attitude toward children. On the theory that a child is unable to decide for himself whether to protect his life, the state has taken a child temporarily from his parents.[57] There the parents were not mentally or physically incompetent to care for the child in the usual sense. They were Jehovah's witnesses who believed that a blood transfusion is prohibited by the words of the Bible. A baby was born with an incompatible RH factor which, according to the medical experts,

opinion of the Court does not elaborate on the scope of this parental liberty. The decision insured the continued existence of parochial schools and served as the basis for the later attempts to justify state aid to them.[51]

It is clear that a state may require parents to send their children to some school. A state may also establish minimum academic requirements for all schools. If such minimum standards are met by a school, parents may send their children to it whether it is parochial, military, or nonsectarian private. The *Pierce* opinion indicated that certain state supervision over private as well as public schools is valid:

> "No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare." [52]

The limits of the state's power to regulate schools were explored in the period of strong nationalistic feelings in parts of the United States following World War I. For example, Nebraska adopted a statute which prohibited teaching of any subject in languages other than English; it also prohibited teaching of foreign modern languages to children below the ninth grade. The Supreme Court reversed the conviction of a teacher who had taught German reading, and pointed out that the state may require English to be the language of instruction of general subjects but that it may not prohibit the teaching of foreign languages.[53] While the case was not decided on grounds of religious liberty, it serves as a good indication of the limits of state power and hence of the scope of individual freedom.

SOCIAL LEGISLATION THAT MAY BE ENFORCED EVEN THOUGH CONTRARY TO RELIGIOUS BELIEFS

While the Supreme Court is reluctant to deny any person the right to engage in religious activity, there are two areas in which state and federal governments may legislate even though the free exercise of religion is infringed as a result. The cases that have arisen

of one kind or another. To the extent that the "absolute wall" theory is supported in the courts, to that same extent a doctrine about which the Constitution itself knows nothing has been imposed on American life.

Yet, however unreal many of the "Church-State" conflicts are, they are inevitable. They grow out of the experience of our age. In the United States some major tendencies in secular culture are at odds with traditional religious values. In many instances the struggle is focused on the ends to be served by democratic institutions. The secularist drive is toward a wholly autonomous secular society. Religion, if it is true to its vocation, must insist on the transcendental dimension of reality. This difference over ends probably can never be finally resolved, and, in terms of the free society at least, there is no particular reason why it should be: the free society admits a plurality of ends among its members.

In other instances, the forces of religion and of secular culture are at odds over means. Tensions of this kind must be resolved—or at least considerably lessened. They would be if each of the disputants would more carefully consider what manner of society it is that he must operate in and decide what means are in conformity with the natural good of that society.

The question here is more one of prudence—of wisdom, really—than of principle. In the pluralist society of America one should not expect to find agreement on principle, either philosophical or theological. We can, however, at least hope that men will agree to serve their divergent principles wisely, and do so in the knowledge of those contingencies—historical, psychological, social—by which even basic principles are conditioned when they are applied to the affairs of men.

Nietzsche's "modern man," for example, must realize what consequences his single-minded secularism has when it is applied in the social order without regard to the religious man's vision. The Christian man of modern times, for his

part, must re-examine the role of religion in a social order from which theological certitude has largely disappeared.

Modern men have dreamed of liberty. In the process of making that dream a reality, they have often seemed to be rejecting any principle or institution which invoked an authority beyond man himself. In particular, modern man has rejected that transcendent authority which at least some churches claim to represent.

True to their own vision, churchmen have condemned the movement toward absolute secular autonomy as a perversion and a lie, insisting that man lives in two orders and that there are two powers—the secular and the spiritual—which have governance in the world.

The problems which this suggests for a pluralist society are obvious. The democratic society as such is committed to no theology or ideology. As the Harvard Report on General Education in the Free Society states, it is simply a civil community; its unity is purely political, consisting in "agreement on the good of man at the level of performance without the necessity of agreement on ultimates." Democracy has properly been described as a forum in which ultimates compete; but the competition must not become internecine; if it does, the democratic community itself is shattered.

The danger for a pluralist society like ours is that the alienation between religion and secular culture may grow increasingly hopeless. For religion to reject—or even seem to be rejecting—the secular culture as rebellion pure and simple, or for secular culture, in its turn, to excommunicate the spokesmen for religion as the force of an anachronistic authoritarianism which has no place in the free society, would be disastrous. Communication between groups which differ on ultimates must be maintained if the peace of the pluralist society is to be maintained.

In contemporary America, however, the forces of religion

In the *Barnette* case,[48] which followed *Gobitis* by three years, the Court reversed itself. The West Virginia Board of Education had promulgated a regulation based on the holding of *Gobitis*. In holding the regulation violative of the First and Fourteenth Amendments, Mr. Justice Jackson, speaking for the Court, stated:

> ". . . As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard." [49]

The Court did not reject the theory on which it had decided the earlier case, recognizing that the requirement of an orderly society may at times have a claim superior to the religious beliefs of individuals. It found, however, that this principle was not applicable to the facts because no imminent danger to society was brought about by the silence of some students during the flag salute. Permitting silence under those circumstances may indeed have a beneficial effect in encouraging the freedoms that vitalize society. Only Mr. Justice Frankfurter, who had spoken for the Court in the *Gobitis* case, dissented from this decision. He emphasized that he did not pass on the social merits of the compulsory flag salute; rather he found that it was within the area of legislative discretion which the Fourteenth Amendment did not reach. He contended that an appeal to change the requirement must be addressed to the legislature and not the courts.

2. *Compulsory Public School Attendance.* Another example of the conflict between state-sponsored social activity and individual freedom was displayed in an Oregon statute requiring all parents to send their children to public schools. In *Pierce* v. *Society of Sisters,*[50] this conflict was resolved in favor of the parents. The Court stated that the liberty protected by the Fourteenth Amendment permits parents to bring up their children as they see fit and that this includes the right to send them to private schools. The

have considered the permissible scope of state regulation of religious activity. We shall now deal with regulations the purpose of which is not to limit religious activities but to require affirmative conduct for the benefit of society. Here the object of the state is not to require its citizens to adhere to certain religious practices. That would be clearly invalid. But in requiring what it deems socially desirable conduct, the state might incidentally infringe the individual's freedom to exercise his chosen religion. We shall first examine the scope of conduct that may not be required by the state and then those state-sponsored activities that may be enforced even though they are in conflict with religious beliefs.

1. *The Flag Salute.* The classic example of complsory conduct with a social purpose and incidental religious effects is the flag salute. The cases in which the Supreme Court first upheld the state legislation and later reversed itself are again illustrative of the changes that take place in First Amendment interpretation.

In 1940 the Supreme Court decided *Minersville School District* v. *Gobitis.*[45] Two children of a Jehovah's witness family were expelled from public school in Pennsylvania for refusing to pledge allegiance to the flag[46] as required by the local Board of Education. School attendance was compulsory in Pennsylvania so that expulsion from public school meant that parents would have to pay tuition at a private school. In upholding the Board of Education's requirement against attack under the due process clause of the Fourteenth Amendment, Mr. Justice Frankfurter stated:

> "... Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities . . . We are dealing with an interest inferior to none in the hierarchy of legal values. National unity is the basis of national security. To deny the legislature the right to select appropriate means for its attainment presents a totally different order of problem from that of the propriety of subordinating the possible ugliness of littered streets to the free expression of opinion through distribution of handbills." [47]

The opinion went on to point out that while the Court might question whether the flag salute would accomplish the national solidarity sought, this does not affect its constitutionality. The wisdom of the requirement is to be considered by the legislature. Only Justice (later Chief Justice) Stone dissented.

and the forces of "liberal" culture seem increasingly to be addressing, and describing, different worlds. The total secularization of American society has proceeded apace, and religious groups have fought to halt the advance. In these struggles the secularist forces assume that they, *prima facie,* are the angels of light, the beleaguered guardians of "true" democracy. And the religious forces? Much too frequently they are found prescribing for society in terms that ceased to be truly relevant centuries ago.

Examples of the progressive fracturing of society that results from this might be drawn from many areas of our national life. The arguments over censorship that have plagued us for so long are by now a classic example. In this particular argument real communication seems to have come to an end, if it ever existed at all. Each camp is convinced that it alone is defending values basic to society's good and each in doing so employs arguments or methods that tear the fabric of society apart.

The liberals are right when they insist that in our society the presumption is always in favor of freedom and the duty of all good "democrats" is to rush to freedom's defense when it seems threatened by some lesser value. But in making their case for freedom, the liberals tend too readily to abstract it from the total context of society. They make freedom a disembodied, a-social thing and often end up denying the liberty of minority groups to assert their own values within the framework of society.

Religious spokesmen—who tend to regard themselves as the guardians of public morality—are right to insist that freedom cannot be abstracted from the total good of the community. They are right to group together for the defense of those moral values without which the community would dissolve into chaos. But, in the process, they often tend to conceive of their role too grandly. By seeking to impose on the public values that, in this time and place, have become private values, they find themselves positing a consensus

where no consensus exists. In doing so, they *act* as though the last few centuries had never happened.

In this situation the secular liberals should first acknowledge and then determine to resist the totalitarian temptation to which they so often seem to be succumbing. They should recognize that their vision of the good society is only *a* vision and at least consider the possibility that a society which systematically excludes the protest of religion runs the risk of becoming dangerously monolithic. They would do well to regain some respect for the diversity of things and realize that in education, the arts, and the law the drive toward a closed and rootless secularism must be resisted if the free society itself is to survive.

Religious men too should face up to the realities of the situation. They ought to realize that it is now many years too late to toll church bells over the loss of public prerogatives. Churchmen must understand that their public role in our society is radically different from the role they played when the authority of the church was universally accepted. Otherwise the church will risk more than the world's enmity —it will risk becoming an irrelevance in whatever world is now being made.

With the emergence of an increasingly technological, depersonalized, and secularized culture, it is clearly the role of religion to stand more strongly than ever as a witness to the spiritual and transcendent aspects of life. For centuries it was generally recognized that this was the public role the church should play. But acceptance of the church's authority is no longer general by any means. If the pretensions of a wholly secularized culture are to be rebuked, some new relationship between religion and the age must be established. It cannot be based on the ordered securities of earlier times and places. It must evoke what Paul Tillich calls a new *theonomy,* a civilization in which the ultimate meaning of existence, the Holy, can be made to shine through new cultural forms.

the *Mormon Church* case employs vigorous language, but again fails to lay down a standard to guide religious sects in the future:

> ". . . The organization of a community for the spread and practice of polygamy is, in a measure, a return to barbarism. It is contrary to the spirit of Christianity and of the civilization which Christianity has produced in the Western world. The question, therefore, is whether the promotion of such a nefarious system and practice, so repugnant to our laws and to the principles of our civilization, is to be allowed to continue by the sanction of the government itself; and whether the funds accumulated for that purpose shall be restored to the same unlawful uses as heretofore, to the detriment of the true interests of civil society." [43]

If this case were to arise today, it is safe to predict that the Court would not use language of this character. In the first half of the twentieth century the Court seems to have become increasingly aware of problems involving religious freedom and would now probably show great reluctance to base a decision on "the spirit of Christianity." In fact, in a case decided in 1946 which upheld the conviction under the Mann Act of a Mormon who had transported a woman across state lines for the purpose of making her his plural wife, the Court, while quoting from the earlier cases as authority, phrased its reasoning in terms of the evil effect on society.[44]

Even though the Supreme Court cases do not give a clear picture of the type of conduct that is beyond First Amendment protection, the Court has been fairly explicit in delineating the wide scope of conduct that is protected. The state's power of interference is confined to the small area involving public safety, the welfare of children, and conduct that shocks the moral code of all but a small minority. The extent of the last category has not yet been defined and may in the future present the Court with problems of reconciling the interest of the state with the individual's freedom to exercise his religion.

SOCIAL LEGISLATION THAT MAY NOT BE ENFORCED WHEN CONTRARY TO RELIGIOUS BELIEFS

In a society where many beliefs flourish side by side, it is not surprising that state regulation for the welfare of all may come into conflict with the tenets of one or the other religious sects. We

Mormon practice of polygamy. There is no question that polygamy was an essential ingredient of the Mormon religion and that its practice was based on religious conviction. That did not prevent Congress from making the practice a criminal offense in the Territories. The assertion that the statute denied Mormons' freedom to exercise their religion was struck down by the Supreme Court:[39]

> ". . . Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices . . ."
>
> "So here, . . . it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances." [40]

This statement serves more to pose than to answer the question of where the line should be drawn between religious interests of individuals and social interests of the state.

In a case upholding a statute that denied the right to vote to polygamists the Court arrived at this formulation:

> ". . . It was never intended or supposed that the [First] [A]mendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society . . . However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation . . ." [41]

Does this mean that First Amendment protection is lost if the "general consent" disapproves of a religiously motivated practice? While this test may be easily applied to disqualify a religious practice such as human sacrifice, its application is more difficult in a less obvious case. Furthermore, while it is clear that some practices, even though religiously motivated, must be prohibited by the state for the health and safety of the community, it is questionable whether "general consent" is the type of test that the sponsors of the First Amendment would have used. In fact, religion by majority rule is what the First Amendment sought to abolish.

Because of the strong disapproval of polygamy, the Court had less difficulty in repealing the act of incorporation of the Mormon Church in Utah [42] than in resolving the issue of noninterference in the *Russian Orthodox Church* case. The opinion of the Court in

The Holy cannot be made to shine through the forms of our age by reliance on methods of public pressure and law that seemed appropriate when a larger and surer religious consensus existed. The worst thing that can be said about some of organized religion's present methods of communicating with the public is not that they are "undemocratic" or "unconstitutional," but that they are anachronistic and ultimately self-defeating. In the society we now see emerging, the standards of conduct which religion can insist upon are limited to those that religion still shares with the secular community. Here no real tensions are likely to arise. But efforts to enforce any religion's particular standards upon the general community, either through law or pressure, can only increase the divisions with which our society is already torn.

How, then, on the level of practice, if not of principle, can religion and the secular society coexist? How can the values of religion be communicated to, and asserted in, a society from which not only theological faith but even moral consensus has widely disappeared? When we discover some answers—however tentative—to these questions, then, perhaps, the tensions between religion and the secular society can be at least partially relieved.

Cathedral.[36] St. Nicholas Cathedral was established as the residence of the ruling archbishop of the Russian Orthodox Church, who was appointed by the Patriarch of the Supreme Church Authority in Moscow. In this case, the Metropolitan of all America and Canada, Leonty, who had been elected by a convention of American churches, claimed the right to possession of the cathedral as against the Moscow-appointed Archbishop Benjamin, by virtue of a New York statute that purported to create an administratively autonomous metropolitan district. The highest court of the State of New York upheld this statute on the theory that the American separatist movement would carry out the purposes of the church more faithfully than the politically dominated archbishop who had been appointed by Moscow. The Supreme Court reversed the state court and held the statute violative of the establishment and the free exercise clauses, as applied to the states through the Fourteenth Amendment.[37] In discussing the free exercise issue, the Court described the statute in these words:

> ". . . It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment . . . [It] prohibits the free exercise of an ecclesiastical right, the Church's choice of its hierarchy." [38]

The Archbishop Benjamin had not relinquished his authority over the church. Quite to the contrary, he refused to allow anyone but himself to exercise that authority. Since he was appointed in the traditional manner established by the central church authority, the First and Fourteenth Amendments barred state interference.

CONDUCT BASED ON RELIGIOUS BELIEFS THAT MAY BE PROHIBITED BY THE STATE

The cases dealing with solicitation for religious causes have already demonstrated that religious practices may have to be curtailed when they come into conflict with the state's interest in preserving public order or the welfare of children. The state's interest must be strong, however, and regulation may not be discriminatory.

In most of the cases that have arisen, the right to engage in religiously motivated conduct has prevailed over state efforts at interference. One area in which this has not been true is the

fraud, and that statements are fraudulent only if the maker does not believe them to be true.[34] In the opinion of the Court Mr. Justice Douglas elaborates on the ingredients of the free exercise of religion. This is worth quoting at some length:

> ". . . Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views . . ." [Citations omitted] [35]

Indirectly the Court did, of course, define religion. It indicated that if the defendant's conduct was sincere it was religious and hence beyond the Court's reach. The Court did not, however, lay down a standard to guide future determinations of what constitutes religious beliefs.

4. *Selection of Clergy.* The fourth area in which the state has unsuccessfully sought to control religious activities differs from the first three in that it does not concern the use of state property or state-operated means of communication. At first glance it is surprising that a state should consider itself competent to resolve a conflict among the clergy of a church on an ecclesiastical matter which affects only the members of the church.

The problem arose against a background of political conflict, with strong feelings on both sides, in *Kedroff* v. *Saint Nicholas*

by Arthur Cohen

THE PROBLEM OF PLURALISM

The United States avoids extremes which have been commonplace in European history: it does not support an established religion or give any legal sanction to irreligion. However the consequence of American tolerance may be as dangerous as the adoption of either extreme would be, for the disinterest with which our Constitution views religion has had the effect of enforcing vagueness about the proper relationship between religion and government. Those who would look with alarm upon any precise definition of such a relationship are, to be sure, untroubled by this vagueness. Vagueness insures the ineffectiveness of religion, whereas clarity would enable the religions to articulate their interests more successfully. Whatever the advantages or disadvantages of the vagueness, it is clear that it arises to a large extent

from a presumed contradiction between the explicit avowal of the Constitution that Church and State should be separate and a clear sentiment of the people in favor of religion.

Whereas the First Amendment prohibits legal establishment of any church and debars the government from partiality towards any organized religion, American society favors religion in general. The favor with which the American people view religion need not run counter to the provisions of our Constitution. In *fact,* however—and the occasions are numerous—the churches interpret the favor of the people as a mandate to achieve ends with respect to which the Constitution is silent. There are the efforts of some religious bodies to inhibit the dissemination of literature and films which they consider injurious to public morality; there are the efforts of religious communities to encourage a religious, and inevitably sectarian, atmosphere in the public schools or to secure public funds for the support of parochial education. These are explicit attempts to organize the religious sentiment of the American people on behalf of sectarian objectives. Were this all, the task of definition would be comparatively simple. Were it the task of the American people and its Constitutional tradition merely to achieve clarity regarding a few, isolated examples of vagueness one might presume that rationality and justice would prevail.

But the issue is not that simple. Demands for justice are clouded by a more generalized and irrational climate of passion, suspicion, and hostility. The various religions do not quite trust each other. The divided and fiercely independent denominations of American Protestantism are suspicious of both the organization and the temporal power of Roman Catholicism; Roman Catholics are angered by the assaults of Protestants, which appear to them as nothing more than annoyance that Roman Catholics do not behave like Protestants; lastly, the Jewish community is fearful that a too-powerful Protestantism or Roman Catholicism might curtail its religious independence. The tragedy attending

struck down when applied to solicitation involving religious ideas. Accordingly a tax on book-selling from door to door may not be applied to a Jehovah's witness selling religious books in the town where he lives, even though he makes his livelihood in that way.[27] A total prohibition of door-to-door solicitation was held to deny free speech and press in violation of the First and Fourteenth Amendments.[28] Three of the Justices in that case reached the same result on the basis of the free exercise clause,[29] which again illustrates the close relationship between the First Amendment freedoms.

3. *Solicitation by Mail.* The use of the mails for religious solicitation raises some new problems, because of the federal Mail Fraud Act.[30] In order to determine when solicitation is fraudulent it would appear necessary to define religion so as to exclude it from the category of fraud.

When fraudulent solicitation is made face to face it may be the subject of criminal laws, and the defrauded individual may have a personal remedy for the harm done to him; but the Court has stated:

> "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not, disseminate information from house to house." [31]

The difficulty of defining religion is obviated in this type of situation. The problem is more difficult when fraud is perpetrated by mail, as was illustrated in the *Ballard* case.[32] In that instance the Court must distinguish between religion and fraud. While this distinction sounds easy in its statement, courts are understandably reluctant to apply it. The danger of defining religion lies in that ". . . one man's fraud may be another man's religion." [33]

In the *Ballard* case, the problem was avoided by holding that a judicial solution would be unconstitutional. The defendants in that case had represented that they had been chosen as divine messengers to communicate the words of Saint Germain, that they had shaken hands with Jesus, and that acting on divine inspiration they had healed many incurably ill persons. The Court held that if the defendants believed what they said, they were not guilty of

The foregoing cases define with considerable clarity the wide scope that the Supreme Court has given to the free exercise clause in the use of public places for religious activities. The freedom is only limited when conduct ceases to be religious and becomes commercial, when it interferes seriously with public convenience, or when it violates such widely held concepts as proper care of children.

2. *Door-to-Door Solicitation.* The Supreme Court has applied the free exercise clause with equal breadth to religious solicitation on private property. It may be thought that a person has greater rights to use public than private property as the scene for religious proselytizing. This is true if the owner of private property has expressed the desire not to be disturbed.[23] The Fourteenth Amendment is phrased as a restraint on states, however, and a state is as impotent to abridge the free exercise of religion on private as on public property.

While freedom from state interference of religious solicitation from door to door is now well established, there was heated conflict in this area in the early 1940's. The split of opinion was also represented on the Supreme Court. In 1942 the Court in a five-to-four decision upheld the constitutionality of a municipal ordinance imposing a license tax on book-selling as applied against Jehovah's witnesses.[24] The next year the Court in *Murdock* v. *Pennsylvania*[25] voted five to four to vacate its earlier decision. In the far-reaching opinion of the Court, Mr. Justice Douglas stated:

> "The fact that the ordinance is 'nondiscriminatory' is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position." [26]

In his dissenting opinion Mr. Justice Reed contended that the selling of religious books by Jehovah's witnesses is not an "exercise of religion." Furthermore he pointed out that the logic of the majority opinion requires tax exemption for all religious activities, with which he would disagree.

Towns have sought to prohibit or regulate door-to-door solicitation in numerous ways, but time and again the efforts have been

these suspicions is that they are not without substance. Protestants and Catholics have, on historical occasions too numerous to recite, acted to inhibit the civic freedom and social well-being of each other and of the Jewish community.

What is common to all the religions on the contemporary American scene is their almost unanimous approval of the role which religion should play in defending American society against the enemy from without and spiritual corrosion from within. The all-too-facile identification of the external political enemy with internal secularism has supplied contemporary religion with a political appeal of considerable power and influence, and once religion is made the adjunct of patriotism it is a simple matter to turn secularism into the partner of tyranny.

One may understand the secular in two ways. In its original meaning, the secular was the non-holy, that portion of the human order which had not yet been penetrated by religious values. In the course of time, however, the word acquired another meaning, as that order of society which is neutral to the influence of religion.

It was characteristic of democratic societies to interpret the civil order as secular and to devise laws, like the First Amendment, which would insure that it remain secular. But both the supporters and the opponents of religion in recent years have been making conspicuous efforts to give the secular a considerably more dangerous and pejorative significance than this. Religious spokesmen have imputed to the secular a meaning which would make it inimical to religion. The secular has been regarded as the source of radicalism, irreverence, and immorality. Their error, I believe, has been to confuse their religious expectations with fulfillment, to imagine that because one wishes society to be redeemed it has in fact been redeemed—and ought to behave that way.

Religious men are not alone in misconceiving the place of the secular. The secularist, so-called, has done his share of mischief. He has converted the secular from the neutral into

the *de facto* opponent of religion. Being unwilling to allow religion free entry into the secular order, he has transformed what is essentially open to all currents of doctrine—religious and non-religious—into the ideological opponent of religion. He has converted the secular into secularism.

While American religious groups discourage the public expression of ideas and values uncongenial to religion, the supporters of secularism interpret every religious thrust into American life as a potential threat to the free society. In the one case the secular is made the opponent of morality; in the other it is made the only safeguard of freedom. In either case what is neutral—neither damned nor saved—is falsely absolutized. The secular is the arena of society, not the weapon of anyone's partisan ideology.

Leaving religions free and unpreferred, the Constitution has obviously left religion without the support of political power. Being a self-limiting form of government, American democracy denies that it is competent to determine the internal ordering of any religious community. It has obliged itself to show no preference for any of them and at the same time has ensured its people that it will not interfere with the valid public expression of their religious sentiment. It will countenance invocations in the Congress, chaplains in the Armed Forces, the celebration of Thanksgiving Day, and the legalization of certain religious festivals as national holidays. Though there may be only dubious legal prerogatives for doing so, the government sustains such observances on the grounds that religious sentiment can do no harm so long as it is sufficiently general and popular and the government maintains only the vaguest of relations to it.

The chariness of the American government's attitude toward religion, combined with the indefiniteness of popular religiosity in this country, has produced a fundamental dilemma. The result is that the demand by organized religious groups for positive governmental support and encouragement has placed on the government a burden which

group on "Peace, Can It Last?" The leaflets also described two books which explained the Jehovah's witnesses' interpretation of the Bible and offered to mail the books to anyone who contributed 25 cents. The cost of the books was greater than 25 cents. The city sought to justify the application of the ordinance to these leaflets by alleging that they constituted commercial advertising. In rejecting this contention the Supreme Court stated:[20]

> ". . . [The states] may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes."

Even when the expression of ideas is of a religious rather than of a commercial nature, a state may regulate it in two types of situations. First, legislation has been upheld which was designed to prevent serious interference with the normal usage of streets and which was applied in a nondiscriminatory manner to regulate the time and place of parades.[21] The statute in that case required the payment of a fee and the issuance of a license before a parade was authorized. The Court held that the statute was constitutionally applied against a parade of Jehovah's witnesses carrying signs, such as "Religion is a Snare and a Racket." The Court found that the license fee was not a revenue tax but bore a reasonable relation to the cost of policing the parade. The Jehovah's witnesses were not prohibited altogether from holding the parade; rather they were limited, in the same manner as all other organizations, to times when the public would not be unduly disturbed.

The second situation in which state control of religious conduct was upheld concerned the welfare of children.[22] The case deals with the Massachusetts Child Labor Law which prohibited boys under 12 and girls under 18 years of age from selling magazines and newspapers. The statute made it a crime to sell papers to children for resale and also for parents to consent to such activities by their children. Pointing out that the family is not beyond regulation in the public interest even against the claim of religious liberty, the Court justified the legislation as within state power to provide for the welfare of children. From the facts of the case it appears that the children were not in any danger, since they were under the supervision of their parents while selling papers. Mr. Justice Murphy would have struck down the statute for this reason.

It is clear that a municipality may not prohibit altogether the distribution of religious printed matter in its streets.[16] This principle has been extended to the licensing system of a privately owned town under which a Jehovah's witness was denied permission to distribute pamphlets containing religious ideas.[17] Since company towns resemble municipalities in all physical characteristics and since the inhabitants differ only in that they all work for the same employer, the logic of applying the Fourteenth Amendment is apparent. The implications of that case, however, may be far-reaching. The decision implies that when individuals or corporations perform what are usually considered state functions, the individuals or corporations may be subject to the same restraints that the Constitution imposes on states. With giant corporations exercising an influence over individuals that is not likely to decrease in power, it is interesting to speculate how far this doctrine may be extended.

A municipal ordinance that does not create discretionary licensing powers in a public official but purports to prohibit all religious addresses in a public park may nevertheless be invalid if it is applied in a discriminatory manner. In *Fowler* v. *Rhode Island*,[18] such an ordinance, which was construed to prohibit Jehovah's witnesses from preaching but to allow preaching by all other sects in public parks, was held violative of the First and Fourteenth Amendments.

The preceding cases indicate the wide scope of religious conduct in public places that may not be prohibited by the state. There are limits, however, to protected conduct. In a few situations the Court has found it necessary to restrict individual freedom when in its opinion the threat to public order and welfare was too great.

One boundary line lies where conduct ceases to be religious and becomes commercial. It is clear that states may prohibit the distribution in the streets of advertising leaflets that contain no religious ideas, even though they make "a civic appeal" or indulge in "a moral platitude."[19] This is not the type of speech that the First Amendment protects.

But it is not always easy to draw the line between commercial and religious activity. A member of Jehovah's witnesses was convicted for distributing handbills on the streets of Dallas in violation of an ordinance that purported to prohibit the distribution of all types of handbills. The defendant's leaflets contained an invitation to attend a gathering to hear an address by a leader of the

only the courts seem competent to bear. Where once it was assumed that the role of government was to grant full independence to religion but not positively to advance its course, it is now widely assumed that government has an obligation to "encourage" religion by assisting it in tangible ways.

This has produced a series of practical disagreements in our society. The feeling among some Roman Catholics that they have a right to public support for their parochial schools; the efforts of both Roman Catholic and some Protestant agencies to review and censor films and books in the interests of public "morality" and to enlist the cooperation of public authorities in doing so; the desire of many communities to display Christian symbols on public, tax-supported property; the attempts of religious associations to introduce Bible-reading and set up religious plaques in the public schools; the effort of Jewish organizations to effect liberalization of Sunday "blue laws" which they feel discriminate against Jewish sabbatarians, are examples of such disagreements. Some of the disagreements are minor, affecting a few communities. Some are major, producing considerable tension and animosity.

There can be little question that many of these issues require the action of the courts. Others, however, involve the broader, non-legal area of social and community arrangements. The tendency of interested organizations and pressure groups to rely upon the courts for solution of all these problems and of political leaders to abdicate judgment while awaiting court definition tends to blunt the reality and seriousness of the problems.

It has not been demonstrated, to my satisfaction at least, that the truly significant problems of religious pluralism are going to be solved by the courts. That we cannot rely solely or exclusively upon the courts is attested to by the hesitancy

and indefiniteness with which the Supreme Court has proceeded in recent years.

The principle on which the Supreme Court formulated its decision in the *Everson* case (1947) was modified a year later in the *McCollum* decision, and *McCollum* was considerably revised four years later in the case of *Zorach* v. *Clauson*. The key principle in all three cases was the nonestablishment clause of the First Amendment. The Court's decision in *Everson* was that the use of tax funds to support free transportation to public and parochial schools did not tend to benefit religious institutions directly and should not therefore be construed as leading to the establishment of religion. A year later the Court decided in the case of *McCollum* v. *Board of Education* that released-time religious instruction within the public school was a violation of the constitutional provision against establishment. In the case of *Zorach* v. *Clauson* (1952) the fact that released-time instruction was to be conducted outside of the school building allowed the Court to find favorably and to declare that the First Amendment "does not say that in every and all respects there shall be a separation of Church and State."

It is clear that the Court chose to project a principle of limited preferment where the assistance to sectarian religions was not direct and could be rationalized on other grounds (the *Everson* decision); outright prohibition where public property was overtly used for religious instruction on released-time (the *McCollum* decision); and more explicit approval of religion where instruction was made available on other than public property (*Zorach*). What had happened? Presumably the problem was the same in all three cases: did the facts tend toward the weakening of "separation" and the strengthening of a trend toward establishment, or were the facts marginal, incidental, and secondary to the broader principle that when the government considers religion without hostility or enmity, it does not thereby establish religion?

religious speech is involved, the case also has value in defining the freedom of religion. First Amendment rights are related when spoken or written words are used to disseminate religious ideas. Thus freedom of the press was the basis for holding unconstitutional a licensing ordinance which required a permit from an administrative official who had complete discretion to prohibit the distribution of religious pamphlets.[12]

A statute that requires the approval by a state official before a religious organization may solicit funds in public places has been held violative of the First and Fourteenth Amendments in *Cantwell* v. *Connecticut*.[13] There the licensing official had the power to determine what causes were "religious." If in his opinion this qualification was not met, the solicitation of funds became a crime. This case does not stand for the proposition that all religiously motivated conduct is beyond state control. In the words of Mr. Justice Roberts who delivered the opinion in one of the few unanimous decisions in this area:

> ". . . The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society . . ." [Footnote omitted] [14]

The refusal of the licensing official to grant a certificate precluded Jehovah's witnesses from proselytizing and soliciting for funds in the streets at all times and under all conditions. This was beyond the power of the state.

Freedom from prior licensing of speech on religious subjects in public places has been extended to the use of electrical sound amplification devices. A municipal ordinance that prohibited the use of loud speakers in a public park on Sundays was held unconstitutional in a five-to-four decision.[15] The minority did not deny that a minister of Jehovah's witnesses had a right to speak without first obtaining a license from an official who had discretion to withhold it; rather they were of the opinion that loud speakers violated the privacy of members of the community who did not wish to listen to the lecture.

CONDUCT BASED ON RELIGIOUS BELIEFS THAT MAY NOT BE PROHIBITED BY THE STATE

Much of the law that has grown up in this area deals with the dissemination of ideas. Conflicts are, therefore, resolved not only under the free exercise clause but also under the freedom of speech provision of the First Amendment. State legislation has frequently been aimed at or applied against Jehovah's witnesses, and this sect has been responsible for making much of the law of religious freedom.

The internal organization of church affairs does not usually affect individuals other than church members. There is consequently less likelihood of a conflicting state interest here than on the issue of public dissemination of religious ideas. As a result, cases arise less frequently in the former than in the latter area.

The Supreme Court has gone far in protecting individuals and groups. In the whole field of religious liberty, the dissemination of ideas and the internal organization of church affairs are perhaps the most settled issues. The law has established the permissible scope of operation of the conflicting interests with more accuracy than elsewhere. It is well to start where there is some certainty and then proceed to less firm ground.

1. *Use of Public Places.* Many municipalities have ordinances that require the approval of a city official before meetings may be held on public property. In *Kunz* v. *New York,*[10] the Supreme Court held unconstitutional a New York City ordinance which required a permit from the police commissioner before a public worship meeting could be held in the streets and gave the commissioner complete discretion to grant or deny a permit. A Baptist minister was refused a permit because he had publicly attacked other religions on previous occasions. He held a meeting without a permit and was convicted.

The Court held the ordinance "clearly invalid as a prior restraint on the exercise of First Amendment rights."[11] It indicated, however, that the minister might have been punished if his conduct had resulted in a breach of the peace. The power, which is inherent in the permit system, of restraining activity before it is carried out may not be placed in the hands of an administrative officer whose discretion is not limited by any standard.

The reasoning of the Court is based on freedom of speech. Since

The declaration of Justice Douglas in the *Zorach* decision that "we are a religious people" may be submitted to many kinds of criticism, but the sentiment it expresses is clear and unimpeachable. It cannot be denied that this country is saturated with religious influences, that early settlers arrived here in pursuit of religious, moral, and intellectual freedom. It is unrealistic to regard separation as an absolutistic concept without consideration for the temper of the people, the mood of the culture, and the desire of many religions to be the recipients of more than governmental hostility. If the *Zorach* decision accomplished anything, it made clear that the Supreme Court was willing to acknowledge that no formulation with regard to either separation or establishment could be final, that in response to the unfolding of events and the exigencies of history the Court would continue to refine its understanding. The Court is evidently still feeling its way. Its Justices seem quite as unsure about the application and extent of the non-establishment clause as are the American people unclear about the role they wish religion to play in our national life.

The Supreme Court is confronted with the unenviable task of defining law in matters affecting religion and government. It has at its disposal a regrettably limited, tersely expressed, and by no means unambiguous set of legal categories, for those provided by the First and Fourteenth Amendments supply but limited direction. Every decision the Justices have formulated in the past fifteen years has been read by some as a shameful concession to organized religion, and by others as a further reinforcement of the total secularization of our culture. The result has been that some disputants were dissatisfied, clarity was only momentarily achieved, and our jurists remained doomed to await another opportunity to rethink their positions and decide again. This, of course, is how the law grows. But it is also the means by which the people's lack of clarity is perpetuated and their refusal to accept responsibility is deepened.

There can be no lasting resolution of the Church-State problem until the people, not the courts, reflect upon just what it is that aggrieves them, what vagueness torments them, what fears aggravate their suspicions and compel them to reject the conciliations of reason and appeal to the "paternalism" of the law.

There seems to be a considerable lack of clarity about the nature of pluralism and the manner in which the character of religious claims are to be related to the accepted fact that ours is a nation of many religions. This confusion has led both thinkers and agitators to imagine that some religious communities are better fitted than others to adapt themselves to a democratic society. It is contended that some theologies, especially those of Roman Catholicism and Orthodox Judaism, make demands which limit the ability of their adherents to fulfill their obligations as citizens in the free society. This contention, however, is based on a misunderstanding both of theology and of the meaning of citizenship.

Pluralism may be understood in two ways. It may refer to the protection which the Constitution guarantees to the expression of all opinion—religious or irreligious. Here pluralism is a legal fact. Pluralism is a religious fact as well. As a religious fact, it describes the presence in our civil society of multiple religious societies, each claiming special insight into the ultimate order of the universe, each articulating a system of moral permissions and limitations, each possessing a mode of worship.

The pluralism protected by the First Amendment would exist even if — an improbable eventuality — all Americans should one day become members of a single religious community. This pluralism-in-principle would protect the possibility that dissent and schism might arise again. The pluralism protected by law makes possible the actual pluralism of our society. The law cannot promise salvation but it can

the state may enforce despite individuals' contrary religious beliefs. The discussion of the establishment clause will be divided into the three areas of state participation in church affairs, state aid to religious institutions, and state aid to education.

Our purpose is to state the law under the federal Constitution as it has been decided by the Supreme Court. We shall not deal, except incidentally, with the religious liberty provisions of state constitutions nor with state decisions that did not reach the Supreme Court. As a result, many unresolved issues will not be covered.[8] The solutions that have been formulated by the Court will serve to point out the areas where conflicts may arise in the future and how they may be resolved.

FREE EXERCISE OF RELIGION

In searching for the meaning of the "free exercise of religion," the Supreme Court has been concerned with resolving the conflict between two interests: On the one hand individuals and religious groups who give public expression to their views on matters of religion and on the other hand the state in seeking to provide for the welfare and safety of its citizens. A statement by Mr. Chief Justice Hughes is applicable here:

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses . . ." [9]

Over the years the Court has arrived at formulations of the permissible sphere of operation of these two interests. When they come into contact the Court must define the limits of each to prevent one from encroaching unreasonably on the other. Since the only cases that reach the Court are filled with deep-seated controversies, it is not surprising that the members of the Court have strongly disagreed among themselves on the proper location of the line dividing the conflicting interests.

the Supreme Court to determine the nature and extent of religious freedom today. The purpose of our discussion is to ascertain the meaning that the Court has placed on the quoted words.

At the outset we must consider the relationship of the clauses, since this sets the scope of the discussion. The wording of the First Amendment imposes restraints only on Congress. The Supreme Court has extended similar restraints to the federal judiciary.[3] Whether the restraints also apply to the executive branch of the federal government has not been decided by the Court.[4] As a practical matter it appears that Presidents have generally conducted their official affairs as though the First Amendment applied equally to the executive and to the legislature.

The Fourteenth Amendment uses broader language in imposing its restraints on any "State." This indicates an intention to cover all three branches of the states' governments. Unlike the First Amendment, it does not contain the word "religion." The protection of free exercise of religion could well be read into the wide concepts of "privileges or immunities," "liberty," or "equal protection."[5] The Supreme Court chose to rely on the "liberty" of the Fourteenth Amendment due process clause as the vehicle for applying to the states the restraints that the First Amendment provisions impose on the federal government.[6] As a result the states are also prohibited from making any "law respecting an establishment of religion, or prohibiting the free exercise thereof."

While the protection of free exercise and the prohibition of establishments have separate spheres of operation, the concepts frequently merge. At times the Court has based its decision on one or both concepts; at other times it has not specified the part of the First Amendment on which it relied. For clarity of analysis, we shall deal with the two clauses separately. One question should be borne in mind throughout this discussion: Is the purpose of the establishment clause to insure the free exercise of religion or is it to go beyond that to remove all religious matters from the jurisdiction of the state? Within this question lies the controversy between no aid and nonpreferential aid to religious institutions.[7]

We shall discuss the free exercise clause in terms of its effect on the religious freedom of individuals. First we shall outline the conduct based on religious beliefs which may not be prohibited by the state and that conduct which may be prohibited. Thereafter, we shall deal with those state-sponsored activities from which individuals may refrain for religious reasons and those activities which

guarantee the right of the believer to pursue his salvation as he chooses.

Generally speaking, the fundamental problem of religion in a free society arises from the fact that religion tends to assert absolute claims and judgments, whereas the free society tends to insist that freedom can only thrive where all claims are treated *as if* they were relative.

The religious judgment is absolute. It matters little whether religion criticizes society in order to conserve values which it fears may pass or to alter values it fears may become entrenched. It acts in either role as a judge of the civil order. The warrant for its judgments may derive from a variety of sources, all inaccessible to the verification of experience. They are not matters for public disputation. Catholics, Protestants, and Jews share in the notion that God must be obeyed. Although their "absolutes" may differ, all acknowledge this. It does not matter whether their convictions about God's law derive from obedience to the church or from obedience to the law of conscience. What matters is that religion—by its very nature—relates itself to society either by protecting values which it conceives to be in danger or propagating values which it believes will benefit the whole of society. It is in this manner that religions express concretely their spiritual obligations.

It is furthermore a matter of indifference to the democratic society if each and every religious doctrine affirms, not only absoluteness, but superiority to its competitors. Each religion may claim to possess not only truths, but The Truth. Such claims are irrelevant to the functioning of the free society. All such assertions are of significance only to those who believe them. It is unfair, therefore, to argue that any one religion is a danger to the democratic society merely because its claim to truth is more encompassing, comprehensive, or dogmatic than its competitors.

The issue of religious absoluteness and superiority becomes a matter of grave concern to the free society only when the

professing religion departs from intellectual assertion and enters the sphere of practical action. It is one thing for the Catholic, Protestant, or Jew to believe his truth is absolutely binding upon himself or even upon all mankind; it is quite another to seek the cooperation of the law to ensure that the supposed obligation of others to believe and obey is practically advanced. It may be the belief of one's religion, for example, that divine law precludes divorce and that this law binds all mankind. The problem for the free society arises when individuals or groups attempt to translate this conviction into civil law.

The primary source of religious tension has its origin, it would seem, in the fact that the religions are not content to restrict their authority to their own members. The Roman Catholic Church, for example, seems anxious to preserve as positive law its own interpretations of the natural law in the case of the anti-birth control legislation on the books in Connecticut and Massachusetts; Protestant denominations have sought to make *their* own scruples (as in the case of Prohibition and gambling legislation) into national policy; the Jewish community has concentrated its efforts on repealing laws which it conceives to be discriminatory rather than on fostering new laws. It is clear, however, that genuine pluralism can be maintained only if persuasion, not the law, is the instrument of religious expression.

It is often argued that pluralism, whatever its status as legal and religious fact, need not be approved or supported merely because it exists. This argument is frequently advanced by Roman Catholics to explain—albeit poorly—their unwillingness to cooperate with other religious groups. It is used against Roman Catholics by those who impugn the authenticity of their participation in the free society and argue that high governmental positions should be denied to them. Although such a position might be countenanced, it should be recognized at the same time that it is divisive and dangerous if pressed too far. It is one thing to be un-

by Maximilian W. Kempner

THE SUPREME COURT AND THE ESTABLISHMENT AND FREE EXERCISE OF RELIGION

A study prepared for the Fund for the Republic under the supervision of Bethuel M. Webster of Webster, Sheffield and Chrystie, Fund counsel.

INTRODUCTION

> *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ."* [1]
>
> *". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."* [2]

It is difficult to conceive of words that go further in protecting the liberties of individuals. The broad scope of freedom that was laid down by the framers of the First and Fourteenth Amendments has served as the standard to resolve the multitude of questions that could not be foreseen when these words were written. Early in our history, the Supreme Court assumed the role of final arbiter of conflicts between the commands of the Constitution and laws enacted by Congress. We must therefore look to the decisions of

All footnotes appear at the end.

willing to discuss theological doctrine with those one believes to be in error (that is a religious right which need not impair one's civic devotion); it is quite another to be charged with disloyalty to the pluralist order because one believes that one's neighbors hold erroneous beliefs.

At the point, however, at which the conviction of theological error is made the basis of restricting civil rights or questioning civil loyalties, pluralism is in danger. There is as much danger in Catholics trying to subvert the pluralistic order as there is in non-Catholics convincing themselves that Catholicism will ultimately do just that. To prevent both the divisiveness of the suspicion and the danger of the accomplished fact, rational discourse must be strengthened. This requires not only the discretion of non-Catholics but the restraint of Catholics.

Viewed from the perspective of the free society the claims of religion may appear perilous. How, it may be asked, can the free society tolerate not merely the survival but the protection by law of competing doctrines, each of which claims to possess a truth relevant to the way men behave? Religious claims would seem to come into unavoidable collision with the conditions of a free society. This is the argument which has been advanced by those republican societies which have pursued a course of Jacobin hostility to religion. It is against such republicanism that one can interpret Alexander Hamilton's argument in the Seventy-first article of *The Federalist:* "In governments purely republican, this tendency [which Hamilton had previously described as "the tendency of the legislative authority to absorb every other"] is almost irresistible. The representatives of the people, in a popular assembly, seem sometimes to fancy that they are the people themselves, and betray strong symptoms of impatience and disgust at the least sign of opposition from any other quarter . . ." Hamilton, though

directing his attention to a specific problem affecting the mechanics of government, indicates a prevailing temptation of the free society.

What Hamilton and others discerned is the tendency to confuse the method of order with the substance of order, to assume that freedom is not just the method of democratic government but the very substance of government. It is not. The free society is first of all a society. Society itself is not composed of freedoms; its component individuals and institutions may be bound to the most tyrannous absolutisms (whether such be tyrannies of passion, values, ideologies, or beliefs) and yet be politically free. What makes a society free is the arrangement under which individuals conceive their relations to others and which the law compels them to respect. Each may tyrannize himself; each man may submit to the tyranny of others. Political freedom consists in the fact that the law prevents tyranny-without-consent and forbids the limitation of another's freedom without his acquiescence. This is only to say that one man's tyranny may be another's freedom. One may understand religion to be a tyranny incompatible with freedom—this is opinion. It is fact, however, that American society is free because its arrangement encourages freedom and prevents coercion.

It is the proponent of religious establishment, on the one hand, and the supporter of latter-day Jacobinism*, on the

*The word Jacobin was used to describe the party of Danton and Robespierre who supported the reign of terror during the French Revolution. Jacobinism, as a concept of political theory, is considerably more benign, although its implication is the same. It was the view of the original Jacobins, subsequently rationalized by such historians as Michelet, that the people—by contrast to the aristocrats, the church, the merchant class, etc.—possessed all right, truth, and justifiable power. It is therefore in the interests of The People that its delegated representatives legislate and the judgments of its representatives are accepted as final. All that they oppose is repressed—and this in the interests of The People, whose representatives they are. The problem of all Jacobin theory arises from the fact that no one is able to define who The People are, what their authentic interests consist in, and how the "non-People" are to be protected from the tyranny of a majoritarianism.

schools; the granting of tax exemptions to churches; voluntary religious studies in public schools; the erection of crêches in public parks. In suggesting that such forms of support as these do not infringe the spiritual liberties of individuals I do not mean to imply that other constitutional prohibitions may not have relevance to the problem of their validity.

5. Cantwell v. Connecticut, 310 U.S. 296, 303-304 (1940). This analysis of the separable purposes of the religious clauses of the First Amendment is similar to that of Mr. Justice Field in Davis v. Beason, 133 U.S. 333, 342 (1890).

6. The most exhaustive consideration of this problem is in Fairman, "Does the Fourteenth Amendment Incorporate the Bill of Rights?", 2 Stanford Law Review 5 (1949). See also, Lien, *Concurring Opinion: The Privileges and Immunities Clause of the Fourteenth Amendment* (1957), *passim*.

7. Palko v. Connecticut, 302 U.S. 319, 325 (1937).

8. The cases in which the Court has indicated that the Fourteenth Amendment actually incorporates the specific guarantees of the First Amendment are many. See, *e.g.*, Grosjean v. American Press Co., 297 U.S. 333 (1936); Thomas v. Collins, 323 U.S. 516 (1945). For a brief discussion of this problem see, Morrison in 2 Stanford Law Review 140, 169 (1949).

9. See, *e.g.*, Murdock v. Pennsylvania, 319 U.S. 105 (1943); West Virginia Board of Education v. Barnette, *id.*, 624 (1943); Kunz v. New York, 340 U.S. 290 (1951).

10. 343 U.S. 250, 288 (1952).

11. Roth v. United States; Alberts v. California, 354 U.S. 476, 503 *et seq* (1957).

12. It is well to remember, furthermore, that in addition to the restrictions on state power which are found in the general limitations of the Fourteenth Amendment, state constitutional provisions set substantial barriers to local "establishment."

13. The assertion, of course, is different from the thesis currently under critical re-examination, that "civil liberties" in general have a preferred status in our constitutional system. The contention with which I am concerned is not dependent upon one's conclusions concerning the other thesis.

14. Shattuck, "The True Meaning of Liberty . . .", 4 Harvard Law Review 365 (1891).

mistaken, for as liberties and rights beyond the reach of that Amendment have secured recognition, the powers of government, as they relate to the interests and influence of religion, have necessarily been affected. Those persons who may be fearful of the possible consequences flowing from my suggestion that the states should be permitted to give more aid to religion than the nation is allowed to provide, may find real comfort, I suggest, in the fact that the equal protection clause of the Fourteenth Amendment sets limits to state power which did not exist when the First Amendment was adopted and which, perhaps, were not envisioned when the Fourteenth Amendment itself became binding on the states. A parallel expansion of constitutional rights against the federal government has significantly reduced the importance of the religious clauses of the First Amendment below the level they occupied in 1789. If those who demand for religious liberty today the same preferential status it enjoyed when the nation was founded will admit that their favorite liberty has been the beneficiary of an expanding constitutionalism, they might also be willing to surrender their outpost of intransigence. From the beginning of time men have found it difficult to live with each other. Reasonable men, however, have found it less difficult than have the impassioned.

FOOTNOTES

1. Everson v. Board of Education, 330 U.S. 1, 15 (1947).
2. Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203 (1943).
3. See, *e.g.*, Davis v. Beason, 133 U.S. 333 (1890).
4. When I refer to governmental aids to religion which do not significantly impair the intellectual or spiritual liberties of individuals I have in mind such supports as the following: the conferring of special military status on conscientious objectors; the provision of transportation facilities to children attending denominational

other, who threaten the free society. The proponents of establishment are a threat because they want to see the law support not only their theological claims to truth but a political priority to which they believe their truth is entitled. The supporters of neo-Jacobinism are in error because, in their opposition to absolutist religious doctrines, they convert freedom into an absolute, making all authority which does not reside in the state an opponent of the well-being of the body politic. Both would wish to make the law a weapon against heresy—in the one case theological, in the other political, heresy. Neither understands the nature of the democratic order, for freedom is the measure, not the substance, of our society.

Not only the religious community but the free society itself may succumb to absolutistic pretensions. It may do so by assuming that freedom consists in reaching agreement and absolute social harmony. To confuse freedom with consensus, to assume that the free society is one where no disagreement should exist, is like saying that if the pulse is even, low, and unexciting, the patient is healthy. It may be, rather, that the patient is just about dead.

Religion in pluralist America is the victim of a species of internal confusion and disorder. On the one hand, it is accused by secularists of pretending to absolute truth and, on the other, of becoming the too-ready partner of official power and policy. On the one hand, it claims to be the heir of prophets who spurned the sanction of human law and, on the other, it frequently attempts to turn public sentiment in such a way as to enforce by law what it cannot persuade by prophecy. On the one hand—and it varies with the faiths—religion may make company with secularists, as many Jewish defense organizations and Protestant social-action commissions do, in order to keep religion out of the public arena of American life on the assumption that only in this way can it protect its freedom; and on the other hand—and this too varies with the faiths—it may make company with legislators,

as both Roman Catholicism and Protestantism have done on numerous occasions, in order to introduce religion into American life on the assumption that only in this way can it keep, not religion, but America free.

What is apparent in this welter of alternatives is that, at the simplest level, the American religions and the American people are using the term freedom to mean a number of different, often contradictory, things; they understand the role of religion variously and they conceive the relation of the religions—one to another and to society at large—quite differently. Often these differences could be composed and reconciled if there were not imposing barriers to rational discussion.

The most profound of such barriers is the evident fact that the different religious bodies have learned to see each other not as spokesmen for God but as instruments of group power. The evident ambivalence with which religion conceives its own vocation bespeaks the condition not only of contemporary religious values but of the whole of the modern world. It is no wonder that religion should have come to conceive of itself in these terms. History commends such a view, realism makes it imperative; any other view would appear foolish, if not dangerous. While seeking to protect the purity of its vertical ascent to God, religion seems compelled to conduct its horizontal relations with utter, and often slavish, attention to the needs and strategies of power. (Let me be clear that this is the view of a Jew who suspects the pretensions of all power and is particularly contemptuous of the arrogations of religious power.)

American religious pluralism is deteriorating in two discernible directions. First, religion has succeeded too readily in adjusting and accommodating itself to contemporary American life. Secondly, religion assumes that, once adjusted, it is entitled, by the nature of its claims to theological truth, to special rights and treatment. In the former it betrays its own vocation; in the latter it compromises the free society.

government. If this interpretation of constitutional history has validity then it seems to me that we can properly hold that in our present scheme of things religious liberty has no higher *constitutional* sanctity than other substantive rights.

The theses that I have offered for consideration are three.

First, I have urged that in so far as national power is concerned we are compelled by our respect for the intention of the framers to read the non-establishment clause of the First Amendment as a barrier not only to federal action which infringes religious and other liberties of individuals but as a prohibition of even those federal aids to religion which do not appreciably affect individual liberties.

Second, I have urged that when the limitations of the Fourteenth Amendment were imposed upon the states they lost not only the power directly to deny the free exercise of religion but to give any aid to religion which would significantly affect the secured liberties of individuals. In considering this problem I suggested that there is no justification for setting as high a barrier against state governments as must be recognized against the nation.

Third, I have suggested that the claim that religious liberty, either against the state or against the nation, has a more favorable status than other constitutional liberties is no longer justified. The denial of that preferential status seems to me to be required not only by the political theory on which our governments were founded but to be required by the policy of non-establishment, both as that policy has set limits to the power of the nation and as it has confined the authority of the states.

An added word of caution seems suitable in conclusion. There has been some tendency to assume that the dimensions of all interests relating to religion are dependent upon interpretations which the Supreme Court may give to the religious clauses of the First Amendment. This assumption is today

with specific prohibition against Congress' enacting any laws respecting an establishment of religion. At the very least that prohibition seems to me to have made the eighteenth century theory of liberty controlling in the area of religion. May it not fairly be argued that it was precisely because the framers granted a preferred status to religious liberty that they saw the need to minimize the consequences of that preference by making the central thesis of their political theory articulate in the non-establishment clause?

Another aspect of history deserves brief attention. I have acknowledged that in the minds of the framers religious liberty may well have occupied a preferred position. If that concession be made, it may be suggested that to deny that liberty a similarly preferred position today is to repudiate our obligation to the framers. My answer to this contention is that I am not asking for degradation of religious liberty but I am emphasizing the familiar fact that since 1789 a host of substantive rights, some then unborn, have come to maturity.

The liberties secured by the due process clause of the Fifth Amendment when it was adopted were few and far between. It has even been suggested (and with considerable justification) that it secured but one substantive liberty—the right to be free from arbitrary physical restraint.[14] By the time that the Fourteenth Amendment was adopted many persons had come to assume that the liberty secured by its due process clause was much more general than the right to be free from arbitrary physical restraint. After a period of uncertainty the Supreme Court came to accept, and therefore to endorse, this opinion. The broader definition of liberty came, quite naturally, to be applied to the concept as it was found in the Fifth Amendment. We can say now that the due process clauses of the Fifth and Fourteenth Amendments secure a very wide range of liberties against federal and state action and do so virtually the same way that the First Amendment secured religious liberty against the federal

by Mark de Wolfe Howe

THE CONSTITUTIONAL QUESTION

Among the sacred traditions of American constitutional law is one which tells us that the principal responsibility of judges is to carry out the "intention" of those who framed the Constitution. It is this tradition which forces lawyers, in their search for intention, and judges, in discovering intention, to play the role of historians. By virtue of the political authority vested in the Supreme Court of the United States, its judges have sometimes exercised the enviable power of converting questionable history into unquestionable law.

Mr. Justice Black, speaking for a majority of the Court, announced in 1947 that the establishment clause of the First Amendment (supplemented by the prohibitions of the Fourteenth Amendment) means at least this: "Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions,

or prefer one religion over another."[1] A year later, the Court, with only Mr. Justice Reed dissenting, endorsed without qualification the accuracy and sufficiency of Mr. Justice Rutledge's historical research, which he had incorporated into his dissenting opinion in the 1947 case.[2]

Surely it is not a mere coincidence that those who are most vigorous in their defense of the law announced in the 1948 decision are the most energetic defenders of Mr. Justice Rutledge's competence as historian, while those who favor non-discriminatory governmental aid to religion are severely critical of the Court's interpretations of history. We are all apt to favor that reading of history which lends support to our own predilections. The consequence is that history is drastically oversimplified. As a preliminary to any formulation of principle it seems suitable, therefore, that one should, as far as possible without bias, identify certain historical problems and acknowledge that the tapestry of history has many strands. One may then come to the conclusion that history does not entirely stultify our capacities of choice and leaves us free to make our own decisions.

As the first step towards an analysis of law it seems important that the principal questions of history with which the Court has been concerned should be identified.

The questions are two. The first concerns the interpretation of the religious clause of the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." The second—and in many ways more important—concerns the effect that adoption of the Fourteenth Amendment had on the power of the states. The relevant provisions of that Amendment are these: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

All footnotes appear at the end.

than to say that the states could not constitutionally compel segregation on racial grounds. The Court did not hold that the Fourteenth Amendment requires that Negro and white pupils be given an integrated education.

These distinctions are of profound importance. When they are forgotten we begin to use the word "rights" and the phrase "civil liberty" in misleading ways. Our rights, as the framers conceived them, were essentially certain specified immunities. They were not claims on, but assurances against, the government. In my judgment one of the greatest dangers in saying that some of our civil liberties are "natural rights" is that by the introduction of Nature or God into the discussion we seem to be asserting that an immunity against governmental interference has been transformed into an affirmative claim on government. When churchmen or others who believe that because religious liberty enjoys a preferential position the government is bound to take action that will make it effective, they ask us to abandon or overlook a central principle in the political theory of the Republic.

It may be urged that there is no reason why the twentieth century should feel itself compelled to respect an outmoded principle of eighteenth century political theory. We have learned from experience that rights considered as mere immunities are limp and inadequate. This realization has led our governments to act affirmatively in making racial equality, freedom of speech, and the dignity of man political realities. Why, therefore, it may be asked, should not the government give to persons who feel an obligation to fulfill their duties to God equivalent aids and supports?

The answer seems to me to lie in the stubborn fact that in so far as religion is concerned, the political theory of the eighteenth century is codified in the non-establishment clause of the First Amendment. Without a constitutional amendment we are not free to exclude its policies from our living tradition. When the framers of the First Amendment guaranteed religious liberty they accompanied that guarantee

My concern is not with the legitimacy of this thesis either as a matter of theology or as a matter of history. There is much evidence to support the belief that the framers of the First Amendment believed religious liberty was more important than other substantive rights to which they gave constitutional protection. To make that admission does not, however, involve a concession that all of the current demands which fly the colors of religious liberty are entitled to preferential respect. In particular, I think, it does not mean that government is under any affirmative responsibility to facilitate the fulfillment of a man's obligations to God. Yet this, I take it, has been the conclusion to which some of those who assert the priority of religious liberty would seek to carry us.

For two reasons I reject the conclusion. In the first place, it seems to me to violate a theory of government which was fundamental in the minds of the framers of the Constitution and which still plays an important and legitimate role in its administration. As I read the original document and its Bill of Rights it seems to me to expound a political theory which is grounded in the belief that liberty is the by-product of limitations on governmental power, not the objective of its existence.

One may fairly say that the conception that liberty becomes effective when the boundaries of governmental power are clearly defined reflects the naiveté of the eighteenth century. One must, however, acknowledge that the naiveté survived with such vigor that it not only defined in the nineteenth century the scope of the Fourteenth Amendment but in the twentieth has measured the significance of the Supreme Court's decision in the Segregation Cases. Just as the framers of the Bill of Rights thought that they had done enough when they protected certain rights from governmental infringement, so the draftsmen of the Fourteenth Amendment believed that they had secured the Negro's essential liberties when they restricted the powers of the states. In 1954 the Supreme Court went no further in its segregation decisions

When Mr. Justice Rutledge sought to discover the intention of those who were responsible for the writing and enactment of the First Amendment, he chose, as others before him had chosen,[3] to treat the opinions of Jefferson and Madison, as they had been formulated in Virginia's earlier struggle to safeguard religious liberty, as of predominant, if not controlling, importance. It is not my purpose either to contest this or to question the interpretation which Justice Rutledge gave to the views of Jefferson and Madison. I am willing to proceed on the assumption that the two Virginians sought in their own state not only to safeguard the individual's conscience but to oppose even those governmental aids to religion which did not appreciably infringe or endanger any individual's liberty.[4] I shall also discuss the problems concerning the interpretation of the First Amendment on the more dubious assumption that Madison—and with him the American people — intended through that Amendment to impose upon the national government exactly those prohibitions which had successfully been imposed upon the Commonwealth of Virginia.

Having made these assumptions it will be well, I think, to emphasize their implications. The First Amendment thus interpreted would serve two purposes. In the first place, it would protect the individual's conscience from every form of Congressional violation, whether by means of legislation with respect to an establishment of religion or by more direct methods. In the second place, it would impose a disability upon the national government to adopt laws with respect to establishments whether or not their consequence would be to infringe individual rights of conscience.

To find this second purpose in the First Amendment involves, necessarily I think, the admission that the Amendment is something more than a charter of individual liberties. In making that admission one is emphasizing a fact which has too frequently been overlooked—that the Bill of Rights as a whole, and the First Amendment in particular, reflect

not only a philosophy of freedom but a theory of federalism. We often forget that the framers were as much concerned with safeguarding the powers of the states as they were with protecting the immunities of the people. Some barriers to national power found their justification in theories of jurisdiction rather than in concepts of personal freedom. Yet it has been a tendency of judges and statesmen alike to read the Bill of Rights as if its provisions had no other purpose than to protect the citizen against the nation. The tendency may be usefully indicated by a reminder of the decision of the Supreme Court in *Cantwell* v. *Connecticut,* the first case of our time in which the Court indicated how the religious clauses of the First Amendment should be interpreted.

"The First Amendment," said Mr. Justice Roberts, "declared that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . . The Constitutional inhibition of legislation on the subject has a double aspect. On the one hand [in the non-establishment clause], it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship . . . On the other hand [in the liberty clause], it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be."[5]

By this interpretation the sole purpose of the religious provisions in the First Amendment was to secure the liberty of individuals against national invasion. This interpretation contains no suggestion that national aid to religion or national recognition of religious interests is objectionable when the immunities of individuals are not significantly affected. There is not, in other words, any indication that the Court saw the non-establishment clause as a self-denying ordinance deriving some of its force from a theory of federalism rather than a philosophy of individual rights. To the extent that the Court in its *Cantwell* decision thus disregarded the possi-

a rejection of the holding in the *McCollum* case, for there it was fairly arguable that the program of religious instruction had aspects restrictive of the secured rights of individuals. If the adoption of the suggested standard of adjudication would transfer such issues as whether public schools may permit the gift of Bibles to willingly receptive pupils from the level of federal constitutional law to that of local legislative policy, I find it hard to believe that the American people would have reason to regret the change.[12]

The position I have so far outlined will, of course, be vigorously opposed by those who are fearful of the power of churches. Those who safeguard the citadels of suspicion with a Maginot line of spurious history are unlikely to surrender their defenses without a struggle. Feeling their cause endangered by a theory of non-establishment which would permit the states to give even limited support to religion, they are likely to question the sufficiency of any other defenses against the abuses of ecclesiastical power. None the less I believe that other important defenses exist and deserve emphatic attention.

Founded partly on theological bases and partly on interpretations of American constitutional history, a prevailing view among some churchmen asserts that religious freedom holds a preferred position in our scale of civil liberties.[13] The religious foundations of this thesis lie in the conviction that because the law of God defines man's duty to his Maker, government is under a peculiar responsibility to respect all efforts which men may make to fulfill the duty as they see it. The historical justification for the assertion lies partly in the fact that the First Amendment and equivalent contemporary state constitutional provisions have dignified religious liberty beyond most other liberties, and partly in the conviction that man's struggle for freedom before the eighteenth century was predominantly the story of his search for religious liberty.

First and Fourteenth Amendments which encourage me to believe that the sort of re-assessment which I am urging has more than academic justification.

Mr. Justice Jackson in his dissenting opinion in *Beauharnais* v. *Illinois* considered the extent to which the measure of state power to restrict freedom of speech was determined by the First Amendment's standard of national power over speech. He urged that the "Fourteenth Amendment 'liberty' in its context of state powers and functions has meant and should mean something quite different from 'freedom' in its context of federal powers and functions."[10] The suggestion that the Court has erred in holding that the Fourteenth Amendment provides speech with the same security against state action which the First Amendment gives it against federal action might be of mere theoretical interest if another Justice of the Court had not recently adopted the same position. Mr. Justice Harlan in June of 1957 followed the suggestion of his predecessor and urged that a state may impose controls over allegedly obscene publications which the national government may not impose.[11] Is it not clear that the dual standard thus suggested is far more obviously applicable to problems of non-establishment than it is to those of free speech?

The First Amendment might well seem to have been rendered effective against the states too when they were forbidden in 1868 to deprive persons of liberty without due process of law. Justices who have come to doubt whether the Fourteenth Amendment had that effect might easily convince themselves and perhaps persuade their brethren that however absolute may be the ban on national legislation respecting the establishment of religion there is nothing in the letter or the history of the Fourteenth Amendment to suggest that such legislation by the states, when it has no significant relation to the liberties of individuals, is forbidden. To adopt this position would not involve a repudiation of the decision in the *Cantwell* case. It might not even involve

bility that the clause might outlaw legislation which does not concern the individual conscience it did not accept the Rutledge interpretation of Madisonian theory. By that rejection or neglect it would seem that Justice Roberts overlooked the aspects of a philosophy of federalism embodied in the First Amendment and the Bill of Rights.

In what I have said so far I have been willing to proceed on the assumption that the Rutledge court was substantially accurate when it described the views of Jefferson the Virginian and Madison the American. A similar assumption is less easily made when one turns to the other historical question which had critical importance to the disposition of the *McCollum* case.

When we remember that the Court which decided the *Cantwell* case, and for which Mr. Justice Roberts was speaking, had before it a case arising not under the First but under the Fourteenth Amendment, its failure to emphasize the principles of federalism is not surprising. What the Court was called upon to decide was whether the State of Connecticut had deprived the defendant of liberty without due process of law by imposing restrictions and penalties upon the free exercise of his religion. This issue, of course, was but one reflection of the broader problem concerning the extent to which all the limitations on governmental power set forth in the Bill of Rights became limitations on state power when the Fourteenth Amendment was adopted. A few scholars and individual Justices of the Supreme Court have contended that the framers of the Fourteenth Amendment intended that its adoption should transform all the specific limitations on federal power found in the Bill of Rights into rigid limitations on state authority.[6] If that interpretation were accepted it would mean, of course, that after 1868 no state could make a law "respecting an establishment of religion, or prohibiting the free exercise thereof." The prohibition would be enforced

not because of the peculiar sanctity of the interests secured in the First Amendment but by virtue of the fact that the Amendment is a part of the Bill of Rights.

A majority of the Court has never been willing to accept such a mechanistic and revolutionary interpretation of the Fourteenth Amendment. Instead the Court has taken the view that though some of the specific prohibitions of the Bill of Rights have become applicable to the states, there are others which the states are not compelled to respect. The generalities which the Court has used for the classification of rights have served to separate those "immunities [that are] implicit in the concept of ordered liberty" (which the states must respect) from those which "are not so rooted in the traditions and conscience of our people as to be ranked as fundamental."[7]

It is not surprising that the Supreme Court, after a period of some uncertainty, came to accept the view that the First Amendment's specific guarantee of freedom of speech and press had been made binding on the states by the Fourteenth Amendment.[8] When that principle was settled it was clear that the free exercise of religion must enjoy similar protection—and it was given that protection with energetic vigor.[9] When Mr. Justice Roberts in the *Cantwell* case found in the religious clauses of the First Amendment security for two religious freedoms, the one of belief, the other of action, he found it natural to assume that each had been rendered secure against state action by the adoption of the Fourteenth Amendment. It would, of course, have been absurd to say that though earlier decisions interpreting the Fourteenth Amendment had made good against the states the *relative* freedom of religious action the Court would not protect the *absolute* freedom of religious belief from state infringement. Surely if a freedom which the Court has classified as "relative" is considered essential to a scheme of ordered liberty the other freedom which it has described as "absolute" deserves no lower classification.

Had the Court in the *Everson* and *McCollum* cases done no more than apply the rule of incorporation enunciated by Mr. Justice Roberts seven years previously, its action might have been beyond criticism. It is the something more that happened which troubles many. By its re-examination of the purposes of the First Amendment the Court imposed, perhaps quite properly, special limitations on the powers of the national government which, as I have said, gain their strength from concepts of federalism rather than from principles of individual liberty. Yet it then proceeded, without discussion, to make those special, non-libertarian limitations on the national government effective against the states as if they were essential to the scheme of ordered liberty prescribed by the due process clause of the Fourteenth Amendment. The Court did not seem to be aware of the fact that some legislative enactments respecting an establishment of religion affect most remotely, if at all, the personal rights of religious liberty.

The Supreme Court of the United States has not yet re-examined its own interpretations of history either as they relate to the original meaning of the First Amendment or as they apply to the incorporation of the non-establishment clause of the Fourteenth. I find it hard to believe that a re-examination of the first matter is of critical importance. I would suggest, however, that public and judicial attention may well be directed to the second issue. If that effort should be made it seems to me that we might find ourselves generally satisfied with the resolution which a respect for history might compel us to adopt. We might find ourselves allowing the states to take such action in aid of religion as does not appreciably affect the religious or other constitutional rights of individuals while condemning all state action which unreasonably restricts the exercise and enjoyment of other constitutional rights.

In recent years two Justices of the Supreme Court have dealt with problems concerning the relationship between the

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SURVIVAL & FREEDOM

NINTH OF A SERIES

A Mike Wallace interview with

Harry S. Ashmore

NY

Executive Editor,
Arkansas Gazette
Little Rock Ark.

Produced by the American Broadcasting Company in association with

The Fund for the Republic

100-391697-568

This is one of a series of thirteen Mike Wallace Interviews, produced by the American Broadcasting Company in association with the Fund for the Republic for the purpose of stimulating public discussion of the basic issues of survival and freedom in America today. This transcript has been edited. Single copies are available without charge from the Fund for the Republic; additional copies 10 cents each.

Harry S. Ashmore received a Pulitzer Prize this year for his editorials in the Arkansas Gazette, of which he is Executive Editor. The paper, published in Little Rock, also won a Pulitzer Prize for distinguished reporting of the Little Rock school crisis. A native of South Carolina, Mr. Ashmore was graduated from Clemson College in 1937, was a Nieman Fellow at Harvard in 1941, and served on the staffs of the Greenville (S.C.) Piedmont, the Greenville News and the Charlotte (N.C.) News before joining the Little Rock newspaper. In 1953 he directed a special research project set up by the Fund for the Advancement of Education to appraise bi-racial education in the United States, which resulted in the book, "The Negro and the Schools." Mr. Ashmore is a director of the Fund for the Republic.

The Fund's Study of the Free Society

The major program of the Fund for the Republic is a study of the basic issues underlying a free society. This study is directed at clarifying fundamental questions concerning freedom and justice that emerge when the forms and principles developed by eighteenth century America meet the ideas and practices of today's highly developed industrial society. One of the aims of the study is to widen the circles of public discussion of these questions. It is for this reason that the Fund is assisting in the presentation of the Mike Wallace Interviews.

The task of clarification is being undertaken by ten distinguished Americans acting as a Central Committee of Consultants to the Fund. These men are:

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ASHMORE: A very good question and I don't have an answer, I'll tell you frankly, before I start trying to answer it. I feel that after Little Rock happened last September people in the South and in Little Rock assumed that the court order was enforceable and that some procedures would be taken by the courts to enforce it. This has not happened. Now, I'm not a lawyer and I don't know what particular procedures the Department of Justice might use, but I do say that the Department of Justice — the executive department of the federal government — is going to have to enforce the decrees of the federal courts if they're going to be carried out. How they do it, I don't know. I'm even prepared to say that if they don't want to do it, then they should tell the people that this law is nullified and there will be no enforcement. But I think this is the problem that the Lemley decision has posed in Washington. It will have to be resolved in the next few weeks.

WALLACE: Harry Ashmore, I'm sure you'll have no objection if I recommend to our audience that they read Harry Ashmore's book, *An Epitaph for Dixie*, billed as "A Southerner explains a middle ground where thoughtful Americans can come together." Thanks very much.

Harry Ashmore himself once summed up the task confronting our nation's press and I think it merits attention here. He said the press should give us "a chronicle of the world we live in, cast in terms of moral values." And he added: "We will err, certainly, and we will be abused. But we will at least be in position in the watchtowers, trying to tell the story in all its dimensions."

WALLACE: Mr. Ashmore, first let me ask you this. You won the Pulitzer Prize this year for your forceful editorials on the integration problem. You criticized Governor Faubus, you denounced the racists who caused trouble over desegregating Little Rock Central High School. What kind of pressures do you have to buck when you take a controversial stand, as you did, on an explosive issue?

ASHMORE: I think that the business I'm in, and the business you're in, is a pressure center. It always has been. I think the degree of the pressure goes up and down and sometimes the sources of the pressure change. Ralph McGill of the *Atlanta Constitution* once said, I think very profoundly, that being the editor of a newspaper in the South these days is like living in the permanent eye of a hurricane. We've had pressure from the readers, we've had some organized pressure exerted—or they attempted to exert it—by the Citizens Council against our advertisers. But with all of this I think the large area of pressure has been a reflection of the very deeply disturbed feeling of the people of the South and of Arkansas and the great division of opinion that exists on what a proper course is in Central High School; and of course I have felt this pressure.

WALLACE: Of course, too, a newspaper is a business, as you have begun to state, and among other things it is there to make money for its owners. As a result of your editorials, now, your *Arkansas Gazette*, for a time anyway, lost 10 per cent in circulation. What I would like to know is, how can a newspaperman operate with integrity when the people who own his paper have to keep their eyes on circulation and on the almighty dollar?

ASHMORE: I think this is one of the natural hazards of the trade and I don't think there is anything new about it. If our readers dislike our position they certainly have a God-given right to cancel their subscriptions. I have always said that when a man pays five cents for a newspaper he gets a proprietary interest in it and if he doesn't like what it's doing, he's got a right to quit taking it and he's got a right to cut off his support. This

also applies to advertisers. However, I think the *Arkansas Gazette* is going to survive. It's been there now for well over a hundred years. It's been through a great many storms before. I think our readers are coming back to us now because they recognize that whether they agree with us or not, that whatever our opinions are, they're honestly held. I think this is a temporary storm which will wear itself out.

WALLACE: What about advertising in your paper? Did it fall off to any appreciable extent?

ASHMORE: No, we have not had any loss of advertising that could be attributed to pressure.

WALLACE: How do you account for that?

ASHMORE: I think, again, because fundamentally we are a business institution and the only basis on which we can sell advertising is that we can put more people through the front door of the advertiser than any other medium can, for the dollars he spends. We're still delivering. The advertisers know this. If it becomes uneconomic for them to advertise in the *Arkansas Gazette,* I'm sure they'll quit. I don't think they will ever quit permanently for ideological reasons.

WALLACE: But, generally speaking, in the long run isn't the reporter, the editor, to a certain extent anyway, at the mercy of financial interests? If his work is going to alienate a certain amount of the public, certain pressure groups, and that is reflected in decreased business for his boss for a considerable length of time, doesn't he automatically put himself out of a job?

ASHMORE: Well, I assume that if your position is unpopular enough, the subscribers all leave, the advertisers all quit, the whole newspaper will be out of business. I don't think this is too real a hazard in our trade. We are subjected to all sorts of pressures including those that come directly from advertisers upon whom we depend for income and we are, first of all, a business institution.

WALLACE: How much power do advertisers wield over editorial policy and news content?

ASHMORE: There is no easy answer to that because the situation varies in many places. I would say

policy. It has got to evolve one between now and September, or nullify the effect of the 1954 Supreme Court ruling.

WALLACE: Still — if I may press you just a little — your best judgment as to what the Supreme Court will do?

ASHMORE: I think it would be very difficult for the Appellate Court to uphold Judge Lemley's decision in this case because of the precedent that's involved, which is much larger really than the question of integration and segregation. It is the question of the enforcement powers of the courts. If they say that public resistance of the kind that we've had in Little Rock to the carrying out of a court order is sufficient reason for the court to nullify its order, then they are getting into an area of constitutional interpretation and law where I doubt very seriously that the court can afford to go.

WALLACE: Therefore you really do expect that the Lemley decision will be overturned?

ASHMORE: I had to anticipate this and this gave me one of my bad moments, because when Judge Lemley ruled and granted a delay in Little Rock this was what my readers wanted to hear. I had to warn them that with the delay — the ruling, the time granted by Judge Lemley — the problem had not been solved and that we still had to face it. This a lot of my readers didn't want to hear. Because I told them this they assumed that this was what I wanted to say and that I was opposing Judge Lemley, which was not the case. But that again is one of the hazards of our trade.

WALLACE: Mr. Ashmore, fairly recently you said that despite the bitter lesson of Little Rock—and this is a quote from you: "The Eisenhower administration still has charted no effective course of action nor displayed any disposition to do so." You have said that here again tonight. Specifically, what would you like to see the administration do?

WALLACE: First of all, can I ask you for a prediction? What do you expect to be the action of the Supreme Court on the appeal from Judge Lemley's decision postponing integration in Little Rock for two and a half years?

ASHMORE: I'm in no position to make any prediction about what the courts might do. I would say this: Judge Lemley's decision posed a very fundamental question that has been coming ever since 1954 when the Supreme Court ruled. Judge Lemley's opinion in the Little Rock case now points firmly and finally, and in a way where it can no longer be avoided, the question of enforcement of the Supreme Court's decision as it has been implemented by the lower courts. Judge Lemley has said that the Little Rock situation is such that the school cannot run normally with the Negro children in it and he has said that this condition is inherent and that therefore it will take a least two and a half years before there is any possibility of resuming normal school operation. I agree with Judge Lemley that the situation that existed there for the last nine months was intolerable. To me it is unthinkable that the school would have to open in September with armed guards around it. But what hasn't been settled in any way by Judge Lemley's decision is what is going to be done about this condition. If Judge Lemley is overturned — many lawyers with whom I have discussed this think the possibility is that the superior courts, either the U. S. Supreme Court or the Circuit Court of Appeals, will either overturn Judge Lemley or seriously modify his ruling — if this happens, then the question still is raised: "Who is going to enforce the court decision when a court, whether it be Judge Lemley's or a higher court, orders the Negro children back to school in Little Rock?" I would say that there will be no enforcement of this rule by local authority. Governor Faubus, if he's re-elected, by his own promise will obstruct this ruling. There will be no one there to enforce it unless the federal government does it. The federal government in my view has no clear policy in this matter. I think that Judge Lemley's ruling has moved the federal government up to the point where it has got to have a

that advertisers exercise that degree of power over editorial opinion that the proprietors of the press are willing to give them. If the proprietors of the newspaper or any other communications agency are willing to stand firm, I think they can win that battle. I think that perhaps too many of them don't stand firm.

WALLACE: You feel that too many of them don't stand sufficiently firm against the advertiser?

ASHMORE: Right.

WALLACE: For what reason?

ASHMORE: Not particularly the advertiser. I think these pressures are diverse. I don't think that in the case of newspapers the direct pressure of advertisers is a dominant factor. It is much more subtle than that. Of course if your advertisers have an adverse view to that you express, you're going to hear of it. It's very rarely that anybody comes storming down to the paper and pulls his advertising out. You don't these days run into a situation like the classic story in my business — the day the elevator fell in the department store. (This is apocryphal.) What do you do? Do you publish this or don't you? And the department store proprietor comes down and says, "If you print this story about the elevator falling, I'll pull my advertising." It doesn't work that way. The pressures are much more subtle than that. And of course very few advertisers ever want to be in the position of having made a public monument to the fact that they withdrew their support for an ideological reason from any newspaper.

WALLACE: When you say the pressures are much more subtle than that, I would like to hear about some of those pressures. Incidentally, this week we talked with Walter Reuther out in Detroit. He charges that generally the daily press, with a few notable exceptions, slants its news against labor. Particularly the Detroit press, he says, slants its news against the UAW. If this is true, one reason might be that the automobile companies are big advertisers — the unions are not. What's your reaction to that statement by Mr. Reuther?

ASHMORE: I'm not, certainly, familiar with the policies of the *Detroit News,* which I don't read regularly, and I couldn't pass judgment on whether the allegations are true or not.

WALLACE: I think he meant not the *Detroit News* specifically but the press in Detroit.

ASHMORE: Even the situation of the press in Detroit. I would find it rather questionable. After all; the newspapers in Detroit have two sources of pressure. One might very well be the automobile industry which controls a large amount of advertising. The other, which would seem to me to be a matter of greater concern to a Detroit editor, would be the readers of the paper. You've got to sell it to them and most of them are members of the UAW. The unions, as a matter of fact, are one great source of pressure on the communications media. In many cases, their pressure, I think, is equal in force and sometimes greater than that exerted by the public community. Again, I'm not suggesting that there is anything wrong with this. I think the unions are going to try to get a break in the press, they are going to try to get not only a fair presentation but a presentation that is favorable to them, which might be unfavorable to the other parties in the controversies in which they are engaged. And they're going to try to get editorial support from the newspapers. Whether the paper gives it to the union or to management in a labor dispute is a decision the newspaper must make, but the pressure is going to be there from both sides.

WALLACE: You talk about the sublety of the pressure. Specifically what are you talking about?

ASHMORE: I'm not sure that "subtle" is the best word that I might have chosen. I think what I am saying is that it's very rarely that the man walks into your office and lays it on the line and says: "You either do this or I pull out of the advertising contract." "You either do this or I have my Citizens Council cancel your 100,000 subscribers." This has happened to me. This wasn't very subtle. But, generally speaking, everybody who is involved in any kind of public issue is trying to influence the publication of the news about that issue. And you might get into this sort of thing. Some of the most difficult ones are

and he can seize it and shout his questioner down, if he chooses to. We've got all kinds of techniques that we should use if our purpose is to try to get an understanding of what the man's position is as against the other thing that we sometimes should do, which is expose him as being a fellow who doesn't have an answer. That's when you pin him down and stick pins in him and put him against the wall. Both things seem to me to be useful.

WALLACE: Of course, there's another device, or method, I should say, in television and radio, and that is the use of tape or film in which you overshoot, let's say. Frequently Ed Murrow overshoots an interview that ends up eventually as a half-hour interview. He may shoot as much as an hour and then pick from that hour's film the parts that he feels best represent the position of the man with whom he is speaking.

ASHMORE: Well, I suppose you could say technically that this is the same thing that any reporter does because you don't write everything the man says when you go into a press conference or an interview. You're selecting those things that are important. The difference is rather an essential one — that with film the man is there and whatever part you pick you don't control, you can't change, the emphasis of what he says. I think there are great advantages and great possibilities for you electronic and tube people in what you can do with an interview by taking a lot of film and getting a man relaxed. You can show the people the personality in the round, in a way that those of us who have to depend on the written word can't do. There are many techniques of interviewing possible to television that have not yet been developed. Actually I would accuse you — and I say you personally, Mike, in part as a symbol — of having taken some of the worst faults of my trade and translated them into the new medium. I hope you're going to develop new techniques that will outstrip us.

WALLACE: We're still young . . . I do want to get into a discussion of what has happened recently in Little Rock.

ASHMORE: Most everybody does.

whatever. All of this would certainly be on the record and the only way a man might take it. But a more common case, particularly talking to public figures, would be with the single interviewer sitting down with a man and making whatever agreement in advance might be the most feasible one to elicit information. That might be that the whole conversation was off the record. It might be that part of the conversation was off the record and part was on or that the interviewer would say: "Now, if you say something that I want to use, I'll tell you in advance 'I want to quote this' and you may say it's on or off the record." I don't think there are any hard and fast rules on this thing and I think we get into what seem to me to be some teapot controversies about this.

I might say this: that television — first radio and now television — seems to have introduced a new element into interviewing that those of us of the old Gutenberg-movable-type — old-fashioned people like me — never had to contend with in the old days. And that is that when you've got a microphone as we have here now, everything is on the record. Everything I may say is on the record. Therefore I've got to be concerned not only about the content of what I say but the form in which it is said, because I can't call these words back. Now in the old days before we had microphones and tape and all of this stuff to contend with, reporters sat around and the subject of the interview was informal. He assumed one thing — that his language would be cleaned up if that was necessary, that even though he were talking for the record, the people were going to try to ask enough questions to find out what it was he was trying to say and would present it in some intelligent fashion whether it actually was in his words or not. This was a much more relaxed procedure than we have now and I am even inclined to think that with the advent of the microphone the press conference has become a very different thing from what it used to be. It's not really a free give-and-take and exchange. A public man who understands these techniques, of course, uses this to communicate with his public. Occasionally he gets a hard question but the microphone's in front of him

purely in personal terms where the person who is asking for influence or trying to use you has no evil purpose and has no threat to hold over you. I have been awakened at 2 o'clock in the morning by a personal friend who has been arrested for drunken driving. He wants this kept out of the paper and he says to me: "If you print this in the morning, you're going to ruin me. This is much worse than a hundred-dollar fine or even a jail sentence." And then I have to be Solomon and say we have to print it. This is pressure — this is very real personal pressure — when you have to say "no" to somebody who not only needs a favor but maybe needs help.

WALLACE: Let's move into another area, or another part of the same area, I guess. You helped guide Adlai Stevenson's 1956 Presidential campaign. Governor Stevenson charged that this country had a more or less one-party press. Another Democrat, Harry Truman, charged that we have a "kept" press — "kept" by what he called the wealthy vested interests of the Republican Party. Do you think this is a fact?

ASHMORE: Well, no, I would dissent in rather important particulars from the judgment of both Adlai Stevenson and Harry Truman on this. I think it is quite true that the press is generally conservative. I don't think that our problem is that the proprietors of the press are all members of the Republican Party, or most of them. I speak on this with some authority because I think that we could hold a convention of Democratic newspaper editors in a telephone booth these days. I'm one of the few left. That was one of the reasons I was with Mr. Stevenson, because if he looked around the country and wanted a Democratic newspaper editor there weren't many of us to choose from. But I think it is an exaggerated argument. I think it is true, as I said, that the tendency of the proprietors of the press and the communications media is conservative, which is not necessarily wrong. I don't think that there's any conspiracy involved in this of any great magnitude. I don't think the favoring of the Republicans by the press results from policy decisions made by those who control the media, though there may be some.

WALLACE: Let's look at another angle. A few years ago when James Eastland of Mississippi launched a Congressional committee investigation into the policies of certain newspapermen in New York City, the *New York Times* charged at that time that the investigation was solely an attempt to harass and intimidate New York newspapers, which had been critical of certain politicians. Now if you want to, you can leave aside the issue of whether the *Times* was right in this case, but do you think this kind of situation represents a considerable threat to the nation's press generally?

ASHMORE: Well, a threat, I suppose, but one that always has been with us from the days of the Founding Fathers forward and will be with us and is one of the things we must accept as a hazard of our trade. I do happen to agree with the *New York Times* in the case of the attack launched by Mr. Eastland and what I deemed to be an improper use of a Congressional investigating committee. However, I don't think that sort of thing is going to be halted. I don't think that the *Times* cried out in despair. I think the *Times* did what it should have done, which was to point out what Mr. Eastland was doing and take into account that it had a pulpit too. There are going to be people who will attack the press — there are going to be politicians who are going to attempt to discredit newspapers. This I think is a natural part of the process. I don't find it very pleasant, mind you, but I think it is something that we live with. I don't think we want to change the ground rules and say that Senators may not investigate a newspaper. I think we're subject to investigation. I think we're also subject to answering back, and this we should do.

* * *

WALLACE: By and large, though, would you say that political figures will retaliate in some way against newspaper reporters or newspapers which antagonize them?

ASHMORE: I think they would. I think, being human beings, of course they would.

WALLACE: As far as you're concerned, that's all right?

ASHMORE: Of course it is. I happen to be in this sort of relationship at the moment with the Governor of my state, Mr. Faubus, who is running for a third term. My newspaper is opposing Mr. Faubus' re-election. The relationship between the newspaper and Mr. Faubus is, let's say, strained. My reporters who are covering Mr. Faubus in the State House and on the campaign trail have some difficulty these days. They don't get much cooperation from Mr. Faubus and his agents. But this is all right and I have no complaint about it. I don't expect Mr. Faubus to be very cordial to me these days because I am saying every morning that he should be defeated. Mr. Faubus has his pulpit; I have mine; and I don't think that I deserve any special quarter. I don't think that Mr. Faubus has to answer any query that one of my reporters may address to him. I think my reporter, on the other hand, has the right to ask the question and print the reply if he can get it or the fact that he couldn't get it.

* * *

WALLACE: On the very subject of getting stories from political figures, sometimes a reporter, on the track of a first-rate story, doesn't have clear sailing. For instance, a politician might tell him: "I'll give you a good story but before you print what I tell you right now I want the right to review my remarks, so that I can be sure that I am being quoted in only those areas in which I want to be quoted." Do you think that a reporter can make that kind of agreement and retain his integrity?

ASHMORE: Well, the agreement that you just stated would seem to be a little extraordinary to me. I don't recall any experience of my own in which I have ever had the proposition put to me quite that way. I do say about this interview technique that the purpose of a serious interviewer, on any part of the media — television, newspapers or whatever — is primarily to elicit information. Now, the means by which you do this are several. There are certain circumstances under which you would insist that everything said is on the record. This might be the press conference, where the man is trying to explain why he got caught with his hand in the till, or

8-4-58

airtel

To: SAC, New York (62-11998)

From: Director, FBI (100-391697) - 569

EX-101

REC-37

FUND FOR THE REPUBLIC MIKE
WALLACE T.V. INTERVIEW PROGRAM
INFORMATION CONCERNING (CRIME RECORDS)

Reurairtel 7-31-58.

This is to advise that Bureau instructions previously issued concerning the monitoring of this program should be complied with. It is desired that you continue to monitor this extended series of Mike Wallace Interviews.

NOTE: Mike Wallace T. V. Interview program has been monitored by New York because of the Fund for the Republic sponsorship. Newspapers have indicated this series will be extended. New York requests instructions for the monitoring of these programs and inasmuch as this extended series is also to be sponsored by the Fund for the Republic, it is desired that New York continue to monitor them.

MAILED 8
AUG - 4 1958
COMM-FBI

ACM:pmk
(4)

Tolson
Boardman
Belmont
Mohr
Nease
Parsons
Rosen
Tamm
Trotter
Clayton
Tele. Room
Holloman
Sandy

AUG 11 1958

D-36 (Rev. 12-13-56)

FBI

Date: 7/31/58

Transmit the following in _____ (Type in plain text or code)

Via AIRTEL (Priority or Method of Mailing)

TO : DIRECTOR, FBI (100-391697)

FROM : SAC, NEW YORK (62-11998)

SUBJECT: FUND FOR THE REPUBLIC MIKE WALLACE T.V. INTERVIEW PROGRAM INFORMATION CONCERNING

NY airtel to Bureau, 7/21/58.

Bureau attention is invited to the "New York Times" newspaper clipping, Page 39, 7/28/58, entitled "Wallace Series Extended on T.V.", which was previously furnished the Bureau.

Said newspaper clipping reflected that the MIKE WALLACE interview series has been renewed for six weeks under the continuing auspices of the Fund for the Republic. It further related that "it is understood the network added an amendment giving it strict control over the programs and content of the series," and that the same ratio of financing will apply to the six-week extended series which means the Fund grant is $23,076.

The above clipping further reflected that next Sunday's (8/3/58) guest would be Major ALEXANDER P. de SEVERSKY, Aeronautical Engineer and Airplane designer.

NY will monitor next Sunday's (8/3/58), Mike Wallace Interview of Major de SEVERSKY and submit same in accordance with prior Bureau instructions in this matter.

The Bureau is requested to advise NY if NY should continue to follow previous Bureau instructions for the monitoring of the other programs in this extended series following 8/3/58. -P- FOSTER

(3) - Bureau (100-391697) RM 101 - XB
1 - New York (62-11998)
RRF:mc

100-391697-6-69
REC-37
CRIM. REC.

Approved: _____ Special Agent in Charge

Sent 18 1 M Per _____

AUG 1 1958

airtel to NY
EMC 8-4-58

FD-36 (Rev. 12-13-56)

F B I

Date: 8/4/58

Transmit the following in ____________________
(Type in plain text or code)

Via AIRTEL ____________________
(Priority or Method of Mailing)

TO: DIRECTOR, FBI (~~100-391697~~)

FROM: SAC, NEW YORK (62-11998)

SUBJECT: O ~~FUND~~ FOR THE REPUBLIC
MIKE WALLACE TV INTERVIEW PROGRAM
INFORMATION CONCERNING

Reference New York airtel to Bureau, 7/31/58.

Enclosed herewith is a tape, number 7659, monitoring the MIKE WALLACE TV interview on ABC-TV 10:00-10:30 p.m., 8/3/58, with Major ALEXANDER P. de SEVERSKY, airplane designer and aeronautical engineer.

Also enclosed for the Bureau is a newspaper clipping from the "New York Times", late city edition, 8/4/58, page 2, entitled, "De Seversky Sees Doom By 1962 If -- "

During the above-mentioned interview, Major de SEVERSKY forecast "destruction of our nation within three years", if the present trend in government military politics were continued. Major de SEVERSKY stated that the Russians were well ahead of the United States in their missile program and their defense planning and stated that the United States strategic Air Force will be only 25% adequate by the end of 1961. In another prediction, Major de SEVERSKY asserted that unless the United States prepares itself by 1962, the possibility exists that "our country will lie in ruins."

As previously set forth in referenced airtel, the Bureau is requested to advise New York if New York should continue to follow previous Bureau instructions for the monitoring of other programs in the extended MIKE WALLACE TV interview program series sponsored by the Fund for the Republic.

REC- 65 P. 100-391697-570

FOSTER

ENCLOSURE

3 - Bureau (100-391697) (ENCS.2) (RM)
1 - New York (62-11998)
RRF:dlo
(5)

EX-101 23 AUG 5 1958

EX-101

REC- 65

57 AUG 12 1958

CRIM. REC.

Approved: H. Foster Sent ________ M Per ________
Special Agent in Charge

DE SEVERSKY SEES DOOM BY 1962 IF—

Warns of Destruction by Soviet if Present Military Policies Are Continued

Alexander P. de Seversky forecast yesterday the "destruction of our nation within three years" if present Government military policies were continued.

He also charged the Administration with covering up "the terrific danger we're in due to the past miscalculations and misunderstanding, and not understanding the development of military technology or Russian effort."

The aviation designer said that President Eisenhower and his advisers were lacking in "technological perception."

Mr. de Seversky asserted that the Soviet Union was well ahead of the United States in intercontinental ballistic missiles and defense planning. By the end of 1961, he said, the United States' Strategic Air Force will be only 25 per cent adequate.

He urged more complete unification of the armed forces and said that the Defense Department must be "primarily the Department of Air and Space."

Mr. de Seversky made his remarks in an appearance on the Mike Wallace interview series "Survival and Freedom," sponsored by the Fund for the Republic on the American Broadcasting Company television network.

He also contended that it would be virtually impossible to keep a "limited" war from spreading if both the United States and the Soviet became involved.

The United States is ahead in the development of communications, "the basic ingredient of modern war," he conceded, and the Soviet may have problems in training personnel. But, he predicted, unless the United States prepares itself," by 1962 we, here are going to be enslaved by the hostile ideology on our country will lie in ruins."

CLIPPING FROM THE

N.Y. Times

EDITION Late City

DATED 8/4/58

PAGE 2

FORWARDED BY NY DIVISION

ENCLOSURE

100-391697-570

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. A. H. BELMONT

DATE: August 7, 1958

FROM : MR. R. R. ROACH

1 - Belmont
Nease
W. C. Sullivan
Liaison Section
Gaffney

Tolson
Boardman
Belmont
Mohr
Nease
Parsons
Rosen
Tamm
Trotter
Clayton
Tele. Room
Holloman
Gandy

SUBJECT: FUND FOR THE REPUBLIC
MIKE WALLACE INTERVIEW PROGRAMS

"The New York Times" of 7-28-58, page 39, carried an article which reflected that the Fund for the Republic (FFR) extended its sponsorship of the Mike Wallace Interview Program for a period of 6 weeks. The article reflected that the same rates of financing would apply to the extended series which means the Fund's grant would be $23,076. The first program of the extended series was scheduled for Sunday, 8-3-58, and would feature Alexander P. de Seversky. A review of Bufiles reflected that Seversky was born 6-7-94 at Tiflis, Russia, and became a U.S. citizen in 1927. He founded Seversky Aircraft Corporation in 1931 and served as director of Republic Aviation Corporation from 1939 to 1940. He assisted the Secretary of War in 1945 on air problems in Europe and the Pacific and in 1946 was the personal representative of the Secretary of War at the Bikini atom bomb tests.

Seversky has not been investigated by the FBI. In October, 1942, James Pollard Clark, with alias Serge Gorin, member of the Russian Nobility Association in America, confidentially prepared a memorandum which was submitted by the Chicago Office and alleged that Seversky was "working secretly as a Soviet agent, informing the Soviet Military Attache in Washington concerning all new developments in Aviation in the United States of America by using as informants white Russian friends....deSeversky poses as a Russian fascist but is in reality a Soviet agent...." No further information was developed to substantiate this allegation. To the contrary, James Matwin, a former Soviet espionage agent, advised in March, 1950, he approached Seversky during the 1930's for information regarding a precision aviation bomb sight but got nowhere. (65-63138-8)(65-6166-29)

Louis Budenz in his book "Men Without Faces," reflected that Sergei Kournakoff, a secret courier for the Soviet Consulate, claimed to be a brother-in-law of Seversky. According to the book, Kournakoff "used to entertain some of us with accounts of his quarrels with Seversky. Seversky, he said, criticized him for having changed his affiliation - from white Russian to red - after coming to this country as a refugee from the Bolsheviks." (65-59071-10X)

JJG:llg (6)

REC-28 100-391697-571

EX-135

13 AUG 12 1958

63 AUG 15 1958

Memorandum Roach to Belmont
RE: FUND FOR THE REPUBLIC
MIKE WALLACE INTERVIEW PROGRAM

Seversky has written articles concerning the value of air power in the defense of the United States. He has spoken against outlawing atomic weapons and has criticized the position of Secretary of Defense as being an unlimited authority to enforce unity and discipline at the highest military levels. Seversky claimed that a dictatorial Secretary of Defense would prevent Congress and the President from choosing from among alternative military programs because they would be limited to confirming a single view without knowing whether it had been arbitrarily imposed or whether it really represented the consensus of military thought. (94-3-4-373-186)(94-33356-13)

By airtel 8-4-58 the New York Office advised Seversky was interviewed by Wallace on 8-3-58 and forcast the "destruction of our nation within three years" if the present trend in government military politics continues. Seversky stated the Russians were well ahead in their missile program and defense planning and the U.S. strategic Air Force will be only 25% adequate by the end of 1961. Seversky predicted that unless the U.S. prepares itself by 1962, the possibility exists that "our country will lie in ruins."

ACTION:

None. For information.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : DIRECTOR, FBI

DATE: 8/4/58

FROM : SAC, NEW YORK (62-11998)

SUBJECT: FUND FOR THE REPUBLIC
MIKE WALLACE TV INTERVIEW PROGRAM
INFORMATION CONCERNING

There is enclosed for the information of the Bureau a brochure entitled "The Fund for the Republic, Inc., Two-Year Report" which is dated May 31, 1958.

This booklet was made available to the New York Office by former Federal Judge HAROLD M. KENNEDY, whose identity is known to the Bureau.

2-Bureau (Encl.1)
1-New York (62-11998)

TGS:mzb
(3)

file 100-391697

100-391697-572

REC-96 20 AUG 5 1958

1 ENCLOSURE

REC-96

EX-117

EX-44

LIAISON

60 AUG 20 1958

ENCLOSURE TO BUREAU (1)

RE: FUND FOR THE REPUBLIC
MIKE WALLACE TV INTERVIEW PROGRAM

Brochure entitled "The Fund for the Republic, Inc., Two-Year Report" dated 5/31/58.

NY file 62-11998

ENCLOSURE

100-391697-572

THE FUND FOR THE REPUBLIC

TWO-YEAR REPORT

HMK

(rec. July 1958)

THE FUND FOR THE REPUBLIC, INC.

TWO-YEAR REPORT MAY 31, 1958

60 EAST 42ND STREET, NEW YORK 17, N. Y.

100-391697-572

BOARD OF DIRECTORS

CONTENTS

THE PRESIDENT'S REPORT

The Fund for the Republic was established in December, 1952, with a grant of $15,000,000 from the Ford Foundation to defend and advance the principles of the Declaration of Independence, the Constitution, and the Bill of Rights. The early period of the Fund was devoted to promoting the discussion of civil liberties and civil rights and to disclosing those situations affecting these liberties and rights which in the opinion of the Board of Directors deserved the notice of the public.

The interests of the Fund during its first three or four years have been reflected in studies that have been referred to in earlier reports and in others that will shortly appear. Those to be published in the near future include the monumental history of communism in America that is being written under the direction of Clinton P. Rossiter of Cornell University, one volume of which is now available; the report of the Commission on Race and Housing; the report of the Commission on the Rights, Liberties, and Responsibilities of the American Indian; an analysis made under the direction of Herbert L. Packer of Stanford University of the testimony of witnesses in important cases in which the charge of communism was involved; a report on wiretapping by Samuel Dash; a study of anxiety among teachers of social science, directed by Paul Lazarsfeld of Columbia University; a report of the School of Librarianship of the University of California on the pressures on librarians in California; a study of Post Office censorship by the Institute of Legal Research at the University of Pennsylvania; and a report by a committee of the Association of the Bar of the City of New York on the administration of the regulations governing passports. As these studies suggest, the Fund undertook during its early years a survey of the principal points of friction in its field

and endeavored to get them considered and understood. It found that understanding was thwarted by the general confusion about the issues underlying civil liberties and civil rights. This confusion was such that a presentation of "the facts" did not always produce useful public discussion. The meaning of the facts, the significance of the facts, and hence what ought to be done about the facts were all obscure because of the lack of any clear, common standard for judging the facts. Hence the area of civil liberties and civil rights has often resembled a battlefield where ignorant armies clash by night. Phrases hallowed by time have been hurled at one another by opposing forces, each of which has claimed to be equally devoted to American principles and each of which has had a different conception of their meaning and their application.

One of the reasons for this is to be found in the changes that have come over the United States, and the world, since the time of the Declaration of Independence, the Constitution, and the Bill of Rights. Many of the institutions that deeply affect the lives of our people were unknown to the Founding Fathers; some they could not have dreamed of; some have altered in themselves or in their relations to other institutions. Industrialization, technology, and the polarization of the world have produced a new society. The conditions under which the Founding Fathers lived have disappeared forever. Thomas Jefferson, for example, based his hopes for democracy on the expectation that we would all be self-employed; that we would not live in cities; that we would learn civic virtue by participating in local government; and that we would be well enough educated to cope with any new conditions that might arise. The first two of these requirements can never be met; the last two are not being met now.

Yet there is an American Proposition. The principles of the Declaration, the Constitution, and the Bill of Rights are that

proposition. They must still be defended and advanced. The question is how to make them real and vital to Americans today. The first step would appear to be clarification. What are the real issues about loyalty and security, church and state, freedom of the press and secrecy, freedom of speech and sedition? And, since the corporation, the union, the media of mass communication, the political party, and the pressure group exert enormous influence in our society, can we hope to clarify the issues affecting our rights and liberties without understanding what these institutions are doing to or for freedom and justice?

In May, 1957, the Board of Directors of the Fund for the Republic, after a year of discussions, consultations, and committee reports, decided to concentrate for one year on the basic issues underlying civil liberties and civil rights, with a view to promoting clarification of them and rational debate about them. In May, 1958, the Board voted to commit itself to the continuation of the program for three years and appropriated $4,000,000 additional for the purpose.

The Fund undertook to assemble a group of distinguished Americans who would engage in this work and transmit the results to their fellow-citizens. They are listed below.

This group, which is called the Consultants on the Basic Issues, determined to try to discover what a free society is and how it may be maintained. It committed itself to conducting this inquiry in the light of conditions as they are today. The Consultants decided that it was imperative to examine the effects on freedom and justice of the large and powerful institutions in which we live and move and have our being. They therefore worked out six lines of investigation: into the corporation, the labor union, the relationship of church and state, the efforts of the government to provide for the common defense, the media of mass communication, and organizations exercising unofficial or semi-official power, such as political parties, pressure groups, and professional associations. Projects in each of these fields were approved by the Board of Directors. Each project is under the direction of a Consultant who is specially responsible. Each has two or more members of the Board associated with it as Liaison Directors.

The Consultants who are specially responsible are expected to report to the full group of Consultants on the progress of their projects. The Liaison Directors are in a position to give their fellow Directors their impressions of the projects with which they are associated. The organization of the projects appears below.

THE INDIVIDUAL AND THE CORPORATION

Consultant
A. A. BERLE, JR.

Liaison Directors
M. ALBERT LINTON
J. HOWARD MARSHALL

Staff Administrator
W. H. FERRY

THE INDIVIDUAL AND THE TRADE UNION

Consultant
CLARK KERR

Liaison Directors
OSCAR HAMMERSTEIN, II
PAUL G. HOFFMAN
MEYER KESTNBAUM

Staff Administrator
PAUL JACOBS

THE INDIVIDUAL AND THE COMMON DEFENSE

Consultant
ISIDOR I. RABI

Liaison Directors
CHARLES W. COLE
J. R. PARTEN

Staff Administrator
WALTER MILLIS

The ultimate result of these labors might be a map of the free society with contemporary institutions located in it. The immediate aim of the Consultants, however, is more modest. It is to disentangle the issues. Many, if not most, of the things that are said on this subject today are slogans, such as "democracy in labor unions," "the right to work," "the wall of separation between church and state," "liberty must give way to security," "vote as you please, but please vote," "the corporate conscience," "the right to know." All of these phrases may refer to some truth; all of them appear on examination to require further explication than most of those who use them appear to suppose. The world is hidden from us by the cliché curtain. The object of the Consultants is to get the issues clear so that rational debate may become possible.

Though this aim is modest when compared with the task of laying out the requirements of a free society today, the undertaking upon which the Fund is embarked is vitally important; for unless it can be carried through, by the Fund or somebody else, the free society can be neither achieved nor maintained. The basic premise of the Republic is that the people shall judge. They cannot judge unless they have standards of judgment derived from principles firmly grasped and clearly understood.

Since May, 1957, the central group of Consultants has occupied itself with plans for the projects mentioned above and with the preliminary discussion of the definition of the free society and of methods of maintaining it. In the process four pamphlets have been published, and additional ones are planned. The four published so far are:

"Individual Freedom and the Common Defense"
by Walter Millis

"Economic Power and the Free Society"
by A. A. Berle, Jr.

"Unions and Union Leaders of Their Own Choosing"
by Clark Kerr

"The Corporation and the Republic"
by Scott Buchanan

These are documents that the Consultants have thought worthy of public attention. They are not to be regarded as necessarily expressions of the views of the group.

Four meetings of the Consultants were devoted to a consideration of the effects on freedom and justice of the military and foreign policy of the United States. An effort to clarify these issues will be published as a book under the title, *Foreign Policy and the Free Society;* it consists of papers by Walter Millis and Father Murray, together with a digest of the Consultants' discussion.

The Fund in taking up the basic issues appears to have entered upon a program in which there is vast if inchoate public interest. The pamphlets referred to above have achieved wide circulation. They have been ordered by universities and colleges, churches, corporations, unions, newspapers, and hundreds of other kinds of organizations. The staff of the Fund has been called on to report on the program at meetings all over the country.

The American Broadcasting Company asked the Fund to join with it in presenting discussions of the basic issues on television. The Fund accepted this invitation, and entered into an agreement for thirteen programs. Up to the date of this report five of these have appeared. Mike Wallace has interviewed Reinhold Niebuhr, Cyrus S. Eaton, William O. Douglas, Aldous Huxley, and Erich Fromm on the topics with which the Fund is dealing. The public response has been tremendous and must be encouraging to those who have been concerned about the "apathy" of the American people on these subjects. Transcripts of each of the interviews are being published.

The Labor Project and the Religion Project held conferences in May of 1958 in which the issues being considered by the Consultants were submitted to large groups of persons specially qualified to comment upon them. The proceedings of these meetings will be published.

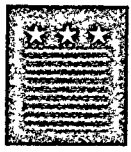
THE PROJECT ON THE CORPORATION

The problem here is to discover the effects upon society of the tremendous development of the modern corporation and to seek to arrive at some standards of judging these effects. The scholars and businessmen connected with the project are interested in learning how corporate policies and practices affect freedom and justice; what the attitudes of employees toward these policies and practices are, and what "democracy" in corporations can mean.

Carl Kaysen of Harvard University is making a study of the management doctrines governing the relations of employers with employees. Robert Weil, Jr., of the New York bar, is preparing a memorandum on the "constitutionalization" of the corporation. Merlyn S. Pitzele, formerly an editor of *Business Week*, is writing on the subject of democracy in corporations. In view of the widespread opinion that contemporary economic and political theory cannot account for many of the important phenomena of contemporary politico-economic life, Gardiner Means, formerly consulting economist for the Committee for Economic Development, and Harvey Wheeler, Professor of Political Science at Washington and Lee University, are at work on an effort to bring this theory up to date.

Associated with the project is a seminar that meets monthly to discuss the bearing of the corporation on freedom and justice. Its members are Abram Chayes, Harvard University; Emile Despres, Williams College; Kermit Gordon, Williams College; Andrew Hacker, Cornell University; Carl Kaysen, Harvard University; Burke Marshall, District of Columbia Bar; Gardiner

Means; William Warfield Ross, Federal Power Commission; Harvey Wheeler, Washington and Lee University; Harris Wofford, Jr., Commission on Civil Rights; Frederick Kessler, Yale University; Arno Mayer, Brandeis University; and Scott Buchanan, a member of the central group of Consultants.



THE PROJECT ON THE TRADE UNION

Mr. Kerr, the Consultant specially responsible, has set up a research committee to advise him on this project. Its members are Benjamin Aaron, associate director of the Institute of Industrial Relations, University of California, Los Angeles; Walter Galenson, professor of economics at the University of California, Berkeley; S. M. Lipset, professor of sociology, University of California, Berkeley; Philip Selznick, professor of sociology, University of California, Berkeley; and W. Willard Wirtz, lawyer, professor of law, Northwestern University.

The project deals with the situation of the member within the union and with the impact of the union upon society as a whole. Mr. Galenson is directing a study of the effects of the national governments of trade unions on the rights of the members. Jack Barbash of the School for Workers, University of Wisconsin, is examining the problems of democracy and individual rights in local unions. Philip Taft of Brown University is analyzing the election and turnover of officers in local unions. The effectiveness of union constitutions in protecting the members is being studied by Leo Bromwich of the Institute of Industrial Rela-

tions at the University of California, Los Angeles. Mr. Jacobs, the staff administrator of the project, is looking into the elements that can sustain caucuses and factions within unions.

On the question of the impact of the union on society as a whole, Frederick Meyers of the University of Texas is examining the history of "right-to-work" laws in Texas; George Belknap of the University of California, Berkeley, and John Bunzell, Stanford University, are studying the role of the union in the political community; Arthur Ross, director of the Institute of Industrial Relations, University of California, Berkeley, is making an analysis of the possibility of developing fiduciary relationships among union leaders, their members, and the public.

Papers dealing with a new philosophy for the labor movement have been commissioned from Solomon Barkin, research director, Textile Workers Union; Lewis Carliner, assistant education director, United Automobile Workers; and Gus Tyler, political action director and director of the training school, International Ladies Garment Workers Union. Merlyn Pitzele, referred to in the description of the Corporation Project, is analyzing the functions of the union in our society.

THE PROJECT ON RELIGIOUS INSTITUTIONS

Father Murray and Mr. Niebuhr, the Consultants specially responsible, have organized this project with a group of eight advisers. They are: William Clancy, Education Director, the Church Peace Union; Arthur

Cohen, publisher, Meridian Books; Rabbi Robert Gordis, Jewish Theological Seminary; William Gorman, former associate director, the Institute for Philosophical Research; Mark DeWolfe Howe, Harvard Law School; F. Ernest Johnson, National Council of the Churches of Christ; Robert Lekachman, Barnard College; and William Lee Miller, Yale Divinity School.

The group has had the advantage of consultation with outside experts invited to discuss particular topics. Leo Pfeffer, counsel for the American Jewish Congress; Msgr. Thomas J. Little and Father Patrick Sullivan, directors of the Legion of Decency; and Patrick Murphy Malin, executive director of the American Civil Liberties Union, have attended meetings of the advisers.

In addition to the meetings of the whole group, in which the meaning of the separation of Church and State, the school question, and religious pressure groups and censorship have been considered, the advisers have been divided into two committees that meet separately. Rabbi Gordis, chairman, and Mr. Howe, Mr. Gorman, and Mr. Johnson are studying the question of governmental support for religious schools and religious instruction and observances in public schools. The other committee, composed of Messrs. Clancy, Cohen, Lekachman, and Miller, has begun by concentrating on the relationship between religion and popular culture in America, with Mr. Miller taking major responsibility. His work will be submitted to the other members for criticism as it progresses.

Messrs. Clancy, Cohen, Howe, and Miller have written essays attempting to structure the problem of "Religion and the Free Society" that will shortly be published, together with an analysis by Maximilian W. Kempner of the law firm of Webster, Sheffield and Chrystie of Supreme Court decisions dealing with the establishment and free exercise of religion.

THE PROJECT ON THE COMMON DEFENSE

The work of this project formed the basis of the discussion of military and foreign policy and its effect on the free society that took place in the four meetings of the Consultants to which reference has already been made.

Three additional areas with which the project has been concerned are (1) the universal military obligation and the impact upon the individual of the draft and reserve acts and other manpower laws and regulations; (2) the significance and effects of the laws, regulations, and popular attitudes built up in recent years for the control or extirpation of sedition and subversive beliefs and teachings; (3) the measures adopted to combat espionage and sabotage, including on the one hand governmental secrecy and classification procedures intended to deny material to espionage, and on the other hand the secret police and counter-espionage procedures intended to protect the secrets or defeat potential saboteurs. In connection with (1) an Occasional Paper by John Graham of the District of Columbia bar will soon be published.

THE PROJECT ON THE MASS MEDIA

This project, like that on groups exercising unofficial or semi-official power, mentioned below, was authorized six months after the others. It was decided to begin with television and; under that head, with the issues involved in governmental control over the medium,

including the question of the application of the First Amendment. The Fund has published an Occasional Paper entitled "Freedom to See," by Herbert Mitgang of *The New York Times,* which discusses the Khrushchev interview in these terms.

A study is being made by Robert W. Horton, former director of information for the National Defense Advisory Commission, of the controversy raging over pay television. Another, dealing with censorship, will be conducted by Charles Winick, director of the Leisure Time Project at the Massachusetts Institute of Technology.

An analysis of the effects of audience rating systems on television programming is being made by J. E. Patterson, a staff writer for *Business Week,* who has written a number of articles related to this topic.

The views of executives of all the leading television networks on the role of television in a free society have been sought. Meetings have also been held with newspaper critics, television producers, lawyers, and others interested in this field.

THE PROJECT ON POLITICAL PARTIES, PRESSURE GROUPS, AND PROFESSIONAL ASSOCIATIONS

This project deals, among other things, with the basic issues of the consent of the governed and of participation and apathy in politics. A study of decision-making in California politics is being made by Mr. Burdick, the Consultant specially responsible, and Mr. Hoffman,

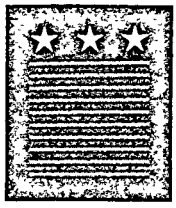
the staff administrator. James Reichley, author and journalist, is investigating the same subject in Philadelphia. Harvey Wheeler, of Washington and Lee University, is undertaking an inquiry into the theoretical aspects of the problem. The project has been afforded continuing and generous cooperation by scholars at the University of North Carolina, where for several years studies of the effect of money in politics, community power structures, and lobbying and pressure groups have been carried on.

Material is being collected on the nature, function, cause, organization, and effectiveness of pressure groups on the Right, and Richard Hofstadter of Columbia University is preparing an essay on this subject. An analysis is being made of the only case that has so far reached a hearing under the operations of the Attorney-General's list of subversive organizations.

An investigation is planned of the control of professional associations over education and their effects upon the freedom of their members.

An advisory committee, consisting of Harvey Wheeler, B. F. Skinner of the Harvard University Psychological Laboratories; James Real, sales consultant; and Donald Rivkin, New York attorney, has met periodically with Mr. Burdick and Mr. Hoffman.

GRANTS *June 1, 1956 through May 31, 1958*



GRANTEE	*Date authorized*	*Amount authorized*
Research and Educational Activity on Individual Rights and Liberties:		
AMERICAN FRIENDS SERVICE COMMITTEE		
For a program of civil liberties conferences for high school students.	September, 1956	$ 33,000
AMERICAN HERITAGE COUNCIL		
Terminal grant to help support a program of education on the meaning and importance of the Declaration of Independence and the Constitution of the United States.	February, 1957	5,000
AMERICAN LIBRARY ASSOCIATION		
For a book awards program.	June, 1956	70,000
AMVETS		
To support "Positive Americanism" community discussion programs.	August, 1956 May, 1957	20,000 5,000

GRANTEE	*Date authorized*	*Amount authorized*
ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH		
To help finance the re-broadcasting of the television program, "Tragedy in a Temporary Town," in connection with the annual meeting of the ADL and its presentation of America's Democratic Legacy Awards.	November, 1956	5,000
ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK FUND, INC.		
Refund of unused portion of grant previously made for a study and report by the Special Committee on the Federal Loyalty-Security Program.		(1,850)
To support a study of policies and procedures in passport matters.	November, 1956	25,000
ASSOCIATION FOR EDUCATION IN JOURNALISM		
For a study of foreign press treatment of civil liberties issues in the U.S., in conjunction with a study of United States newspaper treatment of civil liberties.	November, 1956	4,850
BAR ASSOCIATION OF ST. LOUIS FOUNDATION		
To sponsor and present a series of open-forum television programs.	August, 1956	47,000
BOSTON BAR FOUNDATION, INC.		
To assist in providing counsel in unpopular causes and to conduct educational work in promoting a better understanding of the importance of civil liberties and the means of preserving them.	October, 1957	10,000
CARRIE CHAPMAN CATT MEMORIAL FUND, INC.		
To finance an in-service training course for New York City teachers on the Bill of Rights.	September, 1956	10,000
To assist and encourage programs based on the New York City Freedom Agenda Bill of Rights course for high school teachers.	May, 1957	5,000

GRANTEE	*Date authorized*	*Amount authorized*
COLUMBIA UNIVERSITY		
To assist the Fear in Education Project.	June, 1957	13,000
COMMON COUNCIL FOR AMERICAN UNITY		
A supplementary grant to extend the study of the legal rights of aliens in this country.	June, 1956	7,500
To help support the publication of an analysis of immigration cases.	May, 1957	3,000
COUNCIL FOR CIVIC UNITY OF SAN FRANCISCO		
To provide further support for a television series entitled "Barrier."	September, 1956*	20,000
**Authorization to expend up to $60,000 was given in September, 1955. From this appropriation $20,000 was expended in September, 1956.*		
COUNCIL FOR SOCIAL ACTION OF THE CONGREGATIONAL CHRISTIAN CHURCHES		
To support the discussion of civil liberties issues among its members	November, 1956	7,500
MILWAUKEE JUNIOR BAR ASSOCIATION FOUNDATION, INC.		
For local educational activities in the area of civil liberties, including activities designed to help assure competent defense and fair trial, particularly in cases where significant civil liberties issues are involved.	January, 1957	10,000
NATIONAL BOOK COMMITTEE		
To assist in the publication and distribution of "The Freedom to Read," by McKeon, Merton, and Gellhorn.	June, 1956	2,500
NATIONAL COUNCIL OF CATHOLIC MEN		
For the purchase and distribution of kinescopes of the television program, "Beloved Outcaste."	June, 1956	2,000
NATIONAL COUNCIL OF THE PROTESTANT EPISCOPAL CHURCH		
To support the Church and Freedom Celebration.	November, 1956	19,250

GRANTEE	*Date authorized*	*Amount authorized*
THE NEW YORK PUBLIC LIBRARY		
For support of the Central Reference Library.	February, 1957	1,000
	February, 1958	1,000
PENNSYLVANIA BAR ASSOCIATION ENDOWMENT		
For a study of the right of privacy as affected by current law enforcement practices.	June, 1956	40,000
	May, 1957	3,000
	September, 1957	7,000
STANFORD UNIVERSITY		
A supplementary grant for analysis of the testimony of government witnesses.	September, 1956	30,000
UNITED STATES NATIONAL STUDENT ASSOCIATION		
For educational materials and other activities in connection with the 1957 Academic Freedom Week.	September, 1956	4,000
UNIVERSITY OF PENNSYLVANIA		
Grants, supplementary to 1955 grant, to complete study of post office interference with the flow of information and opinion.	November, 1956	1,500
	May, 1957	1,800
	November, 1957	1,512
To support the Law School's study, "Newspapers and the Administration of Criminal Justice."	May, 1957	20,000
UNIVERSITY YOUNG MEN'S CHRISTIAN ASSOCIATION (BERKELEY, CALIFORNIA)		
For a two-year program of education in the meaning and application of the Bill of Rights, directed to the University community.	September, 1956	25,000

Inter-Group Relations Education:

AMERICAN FRIENDS SERVICE COMMITTEE		
Terminal grant to continue the work of the Community Relations Program.	May, 1957	20,000

GRANTEE	*Date authorized*	*Amount authorized*
BOARD OF CHRISTIAN EDUCATION OF THE PRESBYTERIAN CHURCH IN THE U.S.A.		
To help finance the revision of the film, "The Face of the South."	January, 1957	2,000
BOARD OF SOCIAL AND ECONOMIC RELATIONS OF THE METHODIST CHURCH		
For interracial work and conferences.	November, 1956	25,000
BOARD OF SOCIAL MISSIONS OF THE UNITED LUTHERAN CHURCH IN AMERICA		
To assist an educational program in race relations.	May, 1957	10,000
CHRISTIAN LIFE COMMISSION OF THE SOUTHERN BAPTIST CONVENTION		
Terminal grant to assist educational work in race relations.	May, 1957	15,000
FELLOWSHIP OF RECONCILIATION		
To help finance the production of an account in "comic book" form of the Montgomery bus boycott.	September, 1957	5,000
FREEDOM HOUSE		
For a program in race relations.	November, 1957	5,000
NATIONAL ASSOCIATION OF INTERGROUP RELATIONS OFFICIALS (NAIRO)		
To cover costs of administering the internship program in intergroup relations for 1957-58.	May, 1957	20,000
NATIONAL BOARD OF THE YMCA		
To assist the Student Department's educational program in race relations, with workshops on desegregation in colleges and universities.	November, 1956	5,000
Terminal grant to assist the Student Department's educational program in race relations with southern colleges during the 1957-58 academic year.	May, 1957	15,000
NATIONAL BOARD OF THE YWCA		
To assist the College and University Division's educational program in race relations, with workshops on desegregation.	November, 1956	5,000

GRANTEE	*Date authorized*	*Amount authorized*
NATIONAL BOARD OF THE YWCA *cont'd*		
Terminal grant for the College and University Division's educational program on race relations in the South and Southwest.	May, 1957	15,000
NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A.		
Department of Racial and Cultural Relations		
For educational work in race relations in the south and administrative assistance in the national office during 1958 and 1959.	September, 1957	30,000
United Church Women		
Terminal grant for educational program in race relations by the Department of Christian Social Relations.	May, 1957	20,000
SOUTHERN REGIONAL COUNCIL, INC.		
To support the expansion of the educational work of the Council in twelve southern states, and to assist the central office in Atlanta for the fiscal year ending September 30, 1957.	September, 1956	110,000
To support the Council's educational program in the South for the three-year period beginning October 1, 1957, or such longer period as the Council may determine.	May, 1957	200,000
To help defray the cost of the staff work of the Arkansas Council on Human Relations in its work in western Arkansas.	September, 1957	1,500
For work in the Little Rock area by the Arkansas Council on Human Relations.	September and November, 1957	1,000
For the purchase of the booklet, "South Carolinians Speak," by the Southern Regional Council, to be distributed by the State Councils associated with the Council.	May, 1958	1,250
UNIVERSITY OF OREGON		
For a special research project for the Commission on the Rights, Liberties, and Responsibilities of the American Indian.	July, 1957	15,487

GRANTEE	*Date authorized*	*Amount authorized*
UNIVERSITY OF PENNSYLVANIA		
For a special research project with the Commission on Race and Housing.	November, 1955	6,250
	March, 1956	6,250
	May, 1956	6,250
	August, 1956	6,250
Refund of unused portion of grant.	November, 1956	(10,000)
VANDERBILT UNIVERSITY		
Balance of grant commitment for continuing a legal reporting service on school desegregation by the School of Law.	September, 1956*	100,000
**Authorization to expend $200,000 was given in September, 1955. Of this appropriation, $100,000 was expended in September, 1956.*		
A supplementary grant to cover the final costs of publication of the third volume of the "Race Relations Law Reporter."	May, 1957	15,000
WOMAN'S DIVISION OF CHRISTIAN SERVICE OF THE BOARD OF MISSIONS OF THE METHODIST CHURCH		
For a program of workshops on civil rights problems in tension areas.	May, 1957	10,000

Legal Assistance:

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK FUND, INC.		
For expansion of the study of methods of representation of indigent criminal defendants, being conducted by a joint committee of the Association of the Bar of the City of New York and the National Legal Aid Association.	November, 1956	20,000
UNIVERSITY OF PENNSYLVANIA		
To support a study of pretrial detention in New York City, to be conducted by the Institute of Legal Research of the Law School.	May, 1957	4,900

PROJECTS *June 1, 1956 through May 31, 1958*

PROJECT	*Appropriated during this period*	*Total Appropriated*	*Unexpended Balance at May 31, 1958*
Research and Educational Activity on Individual Rights and Liberties:			
STUDY OF THE INTERNAL COMMUNIST MENACE			
For studies of Communist influence in major segments of U.S. society, and revision of the bibliography of the Communist Record (authorized November, 1953).	$137,500	$462,500	$ 71,803
STUDIES OF LOYALTY-SECURITY PROGRAMS *(completed)*			
(authorized June, 1954) **Includes refund of $1,850 from Association of the Bar of the City of New York Fund, Inc.*	(48)	199,952*	none
GENERAL WORK IN TELEVISION AND RADIO *(terminated)*			
To explore the potentialities of commercial television as a medium for matters of interest to the Fund (authorized September, 1954). **Includes a $2,000 grant to the Board of Christian Education of the Presbyterian Church in the U.S.A. and a $5,000 grant to the Anti-Defamation League.*	(1,682)	248,318*	none

PROJECT	*Appropriated during this period*	*Total Appropriated*	*Unexpended Balance at May 31, 1958*
STUDY OF FEAR IN EDUCATION			
For a study of attitudes of college and high school teachers (authorized September, 1954). **Includes a $13,000 grant to Columbia University.*	15,000	180,000*	1,714
BLACKLISTING IN PRIVATE INDUSTRY *(completed)*			
For a study of blacklisting in the motion picture, radio, and television industries (authorized September, 1954).	19,090	139,090	none
DISTRIBUTION OR SUBSIDIZATION OF PUBLICATIONS ON CIVIL LIBERTIES SUBJECTS *(terminated)*			
(authorized November, 1954)	74,356	189,356	none
CIVIL LIBERTIES EDUCATIONAL PROGRAMS WITH TRADE UNIONS			
Aimed at helping unions carry on educational activities on civil liberties and civil rights (authorized April, 1955).	47,500	102,500	128
ROBERT E. SHERWOOD TELEVISION AWARDS			
To encourage the development of television productions on themes of freedom and justice (authorized May, 1955).	46,812	218,062	39,074
STUDY OF POST OFFICE INTERFERENCE WITH THE FLOW OF INFORMATION AND OPINION			
(authorized May, 1955) **Includes grants to the University of Pennsylvania in the amount of $3,300.*	1,400	36,400*	none
NATION-WIDE TELEVISION NEWS FILM CLIPS PROJECT *(terminated)*			
To provide motion-picture reports of interest in civil liberties or race relations to television news editors (authorized September, 1955).	(3,500)	196,500	472

PROJECT	*Appropriated during this period*	*Total Appropriated*	*Unexpended Balance at May 31, 1958*
TAPE RECORDINGS FOR RADIO USE OF HEARINGS OF SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON THE JUDICIARY, U.S. SENATE *(completed)* (authorized September, 1955)	(1,084)	5,916	none
HANDBOOK ON IMMIGRATION LAW To purchase, at cost, sufficient copies of an immigration handbook to supply the needs of voluntary social agencies working in the field of immigration and deportation, and thereby to make feasible a commercial edition of the handbook (authorized September, 1955).	—	20,000	20,000
BI-MONTHLY BULLETIN ON CIVIL LIBERTIES ISSUES To acquaint the general public with the Fund and the work undertaken by Fund grantees (authorized March, 1956).	38,000	76,000	25,778
AMERICAN TRADITIONS PROJECT *(completed)* To collect and publicize instances of the successful application of the Bill of Rights to present-day situations (authorized March, 1956).	16,108	51,108	none
NEWSPAPER CARTOON SERIES, "IT'S YOUR AMERICA" *(completed)* For a series of cartoon panels on the subject of American liberty (authorized March, 1956).	1,079	16,079	none
POPULAR EDUCATION PROGRAM To publicize the work of grantees and projects of the Fund (authorized May, 1956).	160,000	297,300	120,378
ANALYSIS OF BLACKLISTING TESTIMONY *(completed)* (authorized September, 1956)	2,000	2,000	none

PROJECT	Appropriated during this period	Total Appropriated	Unexpended Balance at May 31, 1958
Inter-Group Relations Education:			
COMMISSION ON RACE AND HOUSING. To study the housing of minority groups (authorized November, 1954). **Includes a grant of $15,000 to the University of Pennsylvania.*	70,000	305,000*	34,732
COMMISSION ON THE RIGHTS, LIBERTIES, AND RESPONSIBILITIES OF THE AMERICAN INDIAN (authorized September, 1955) **Includes a grant of $15,487 to the University of Oregon.*	282,732	382,732*	298,915
APPRENTICESHIPS IN INTERGROUP RELATIONS (authorized November, 1956) **Includes $20,000 granted to the National Association of Intergroup Relations Officials and a future grant of $20,000 to the same organization.*	100,000	100,000*	25,000
Fellowships:			
FELLOWSHIP AND GRANT-IN-AID PROGRAM *(terminated)* To assist people of mature judgment who are doing or who are qualified to do constructive work in areas of the Fund's interest (authorized November, 1954).	59,781	289,781	none
FOREIGN TRAVEL FELLOWSHIPS FOR SOUTHERN JOURNALISTS *(completed)* (authorized June, 1956)	60,000	60,000	none

PROJECT	*Appropriated during this period*	*Total Appropriated*	*Unexpended Balance at May 31, 1958*
Legal Assistance:			
LEGAL SERVICE FOR LAWYERS ON SECURITY REGULATIONS *(terminated)*			
To support continuation of a looseleaf service for lawyers on government security and loyalty programs (authorized November, 1954).	17,895	44,295	none
Study of Basic Issues in Civil Liberties:			
	$5,295,215	$5,320,215	$4,640,437

Of the $5,295,215 appropriated during this period, $2,120,175 has been allocated to specific projects. Of the $5,320,215 total appropriation, $2,145,175 has been allocated to these projects. The projects are:

PROJECT	*Allocated during this period*	*Total Allocated*	*Unexpended Balance at May 31, 1958*
COMMITTEE OF CONSULTANTS ON THE BASIC ISSUES			
For studies by the Committee of Consultants of the basic issues of individual freedom and civil liberty in the United States (authorized May, 1956).	547,650	572,650	312,443
THE INDIVIDUAL AND THE CORPORATION			
For studies of the effects of the corporation on the economic, political, and social freedoms of the individual (authorized May, 1957).	291,000	291,000	213,626

PROJECT	Allocated during this period	Total Allocated	Unexpended Balance at May 31, 1958
THE INDIVIDUAL AND THE TRADE UNION			
For studies of the effects of the trade union on the economic, political, and social freedoms of the individual (authorized May, 1957).	276,450	276,450	178,448
THE INDIVIDUAL AND THE COMMON DEFENSE			
For studies of the relationship of governmental defense measures to individual freedom and liberty (authorized May, 1957).	114,800	114,800	87,535
RELIGIOUS INSTITUTIONS IN A DEMOCRATIC SOCIETY			
For studies of the relationship between church and state, the role of religion in public life, and the right of religious dissent, as they affect the freedom of the individual (authorized May, 1957).	225,900	225,900	148,919
MASS MEDIA IN THE FREE SOCIETY			
For a study of the role of television in the free society (authorized November, 1957)	245,000	245,000	225,579
POLITICAL PARTIES, PRESSURE GROUPS, AND PROFESSIONAL ASSOCIATIONS			
For studies of the relationship of political parties, pressure groups, and certain other voluntary associations to individual and civil liberty (authorized November, 1957)	113,850	113,850	92,201
IMPLEMENTATION OF THE BASIC ISSUES PROGRAM			
To implement the work of the Consultants and projects in the Basic Issues (authorized November, 1957).	305,525	305,525	206,646

FINANCIAL STATEMENT

AUDITORS' REPORT

To the Board of Directors of
The Fund for the Republic, Inc.:

We have examined the statement of assets, liabilities, and fund balance of THE FUND FOR THE REPUBLIC, INC., as of September 30, 1957, and the related statement of receipts, grants, and expenses for the period from December 9, 1952, the date of inception of the corporation, to September 30, 1957. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statements present fairly the financial position of The Fund for the Republic, Inc., at September 30, 1957, and its receipts, grants, and expenses for the period from December 9, 1952 to September 30, 1957.

LYBRAND, ROSS BROS. & MONTGOMERY

New York, October 23, 1957

STATEMENT OF ASSETS, LIABILITIES, AND FUND BALANCE

As of September 30, 1957 *(examined by independent certified public accountants)* and May 31, 1958 *(not examined by independent certified public accountants)*

	September 30, 1957	*May 31, 1958*
ASSETS:		
Cash in bank and on hand	$ 9,909	$1,124,774
Investments in United States Government Bonds and other Securities at cost (at market quotations, $6,560,300 and $4,931,133 respectively)	6,853,580	4,909,538
Accrued interest on investments	49,271	37,614
Accounts receivable and advances	47,542	34,183
	$6,960,302	$6,106,109
LIABILITIES AND FUND BALANCE:		
Accounts payable	$ 29,222	$ 9,986
Unexpended appropriations (Note)		5,278,431
Fund balance (Note)	6,931,080	817,692
	$6,960,302	$6,106,109

Note: As of May 31, 1958, the Board of Directors has authorized expenditures for uncompleted projects administered by the Fund of $7,487,747 of which $5,278,431 remains unexpended. These committed funds of $5,278,431 have been listed separately as Unexpended Appropriations. The fund balance at May 31, 1958, therefore, is the uncommitted balance remaining to be appropriated to future grants and projects. At September 30, 1957, unexpended appropriations of $1,173,610 for projects administered by the Fund were included in the fund balance of $6,931,080 rather than shown separately.

STATEMENT OF RECEIPTS, GRANTS, AND EXPENSES

For the period from December 9, 1952 *(Date of Incorporation)* to September 30, 1957
(examined by independent certified public accountants)
and October 1, 1957 to May 31, 1958
(not examined by independent certified public accountants)

	December 9, 1952 to September 30, 1957	*October 1, 1957 to May 31, 1958*	*Total*
RECEIPTS:			
Grant from the Ford Foundation	$15,000,000		$15,000,000
Interest earned on investments	996,391	$107,896	1,104,287
Profit or (loss) on disposition of securities	(132,986)	(24,292)	(157,278)
Royalties, sale of books, and contributions	6,726	3,333	10,059
	$15,870,131	$ 86,937	$15,957,068
GRANTS AND EXPENSES:			
Grants	$ 3,373,785	$ 34,762	$ 3,408,547
Projects	3,168,847	706,774	3,875,621
Program development	242,205	3,596	245,801
Administrative expenses:			
Compensation and employee benefits	1,229,818	122,084	1,351,902
Travel	100,893	3,211	104,104
Legal and accounting fees	250,738	15,104	265,842
Public information	201,015	18,060	219,075
Conferences and meetings	18,546	1,377	19,923
Rent	109,209	8,258	117,467
Office expense	146,975	7,887	154,862
Purchase of equipment and leasehold improvements	75,594	320	75,914
Other	21,426	461	21,887
	$ 8,939,051	$921,894	$ 9,860,945
Excess (deficiency) of receipts over grants and expenses	$ 6,931,080	($834,957)	$ 6,096,123

OFFICERS AND STAFF

ROBERT M. HUTCHINS, *President*

W. H. FERRY, *Vice President; Staff Administrator, Corporation Project*

FRANK K. KELLY, *Vice-President; Staff Administrator, Mass Media Project*

HALLOCK HOFFMAN, *Secretary and Treasurer; Staff Administrator, Project on Political Parties, Pressure Groups, and Professional Associations*

JOHN COGLEY, *Staff Administrator, Religion Project*

PAUL JACOBS, *Staff Administrator, Trade Union Project*

WALTER MILLIS, *Staff Administrator, Common Defense Project*

EDWARD REED, *Director of Publications*

JOSEPH LYFORD, *Public Information Officer*

M. ALBERT LINTON, *Controller*

BETHUEL M. WEBSTER, *Counsel*

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. A. H. Belmont

DATE: July 28, 1958

FROM : R. R. Roach

SUBJECT: FUND FOR THE REPUBLIC

Tolson
Boardman
Belmont
Mohr
Nease
Parsons
Rosen
Tamm
Trotter
Clayton
Tele. Room
Holloman
Gandy
W. C. Sullivan

On July 22, 1958, the Fund for the Republic (FFR) sent the Director a copy of its two-year report dated May 31, 1958. This report contained the FFR's financial statement which reflected that the Fund had an uncommitted balance of about $817,000 to be appropriated to future grants and projects. The FFR also had a balance of about $5,000,000 which had been committed but as yet is unexpended.

The two-year report also listed some of the pertinent reports to be published as a result of FFR's studies in the near future. Some of these are: 1. History of communism in America being written under the direction of Clinton P. Rossiter of Cornell University. (One volume already published.* This is the project for which Earl Browder was hired as a consultant). 2. Analysis of the testimony of witnesses in important cases in which the charge of communism was involved, under the direction of Herbert L. Packer of Stanford University. (FFR granted $25,000 for this project in August, 1955, and an additional $30,000 in September, 1956). 3. A report of wire tapping by Samuel Dash (who is conducting this survey for the Pennsylvania Bar Association under an FFR grant of $50,000 since June, 1956). 4. A report on the administration of the regulations governing passports by the Association of the Bar of the City of New York. 5. "An analysis is being made of the only case that has sofar reached a hearing under the operations of the Attorney General's list of subversive organizations." (This may refer to the hearing afforded the Independent Socialist League, the Workers Party and the Socialist Youth League under Executive Order 10450 following which the hearing officer recommended they be retained on the list. The organizations threatened to bring the case before the court but on July 18, 1958, the Attorney General signed an order removing them from the list).

The two-year report also named about fifty individuals connected with the Fund's basic issues program, who have not

REC-68 100-391697-573

JJG:pwf (6)

EX 101

* First volume of series, "The Roots of American Communism" by Theodore Draper, was reviewed by Central Research Section AUG 29 1956 and memo submitted.

1 - Mr. Belmont
1 - Mr. Nease
1 - Mr. W. C. Sullivan
1 - Liaison Section
1 - Mr. Gaffney

77 AUG 20 1958

been previously identified with the FFR. A separate memorandum reflecting derogatory information contained in Bureau files regarding these individuals will be submitted when the file reviews have been completed.

ACTION:

None, for information.

FD-36 (Rev. 12-13-56)

FBI

Date: 8/18/58

Transmit the following in _____
(Type in plain text or code)

Via AIRTEL
(Priority or Method of Mailing)

TO: DIRECTOR, FBI (100-391697)

FROM: SAC, NEW YORK (62-11998)

SUBJECT: FUND FOR THE REPUBLIC
MIKE WALLACE TV INTERVIEW PROGRAM
INFORMATION CONCERNING

Re NY airtel 8/11/58.

Enclosed herewith is the tape (#7928) monitoring the MIKE WALLACE televised interview with Mr. HENRY WRISTON, former President of Brown University and presently President of the Council on Foreign Relations, from the MIKE WALLACE program of 8/17/58, 10:00-10:30 p.m., ABC-TV.

During the above mentioned interview, Mr. WRISTON stated that he is of the opinion that the U.S. over-dramatizes the issues currently facing us such as the Middle East crisis, foreign policy, and the "threat of war".

WALLACE stated that WRISTON's views are important inasmuch as he is an independent (politically) observer. Mr. WRISTON strongly feels that there is an air of pessimism over the U.S. position in the world picture and stated this is strongly based (in the U.S.) on the attitude that optimism means complacency.

WRISTON strongly defends the U.S. position in its current attitude toward the Middle East and insists that we are taking a "morally" sound attitude. WRISTON called for a positive approach by the members of Congress in a "sadly neglected field in the past....that of putting capable men in the front ranks of foreign service."

EX-128

ENCLOSURE

100-391697-574

FOSTER

3-Bureau (100-391697) (Enc.1)
1-New York (62-11998)

RRF:EG
(5)

REC-8

REC-8

AUG 21 1958

EX-128

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

51 AUG 25 1958

CRIM. REC.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. A. H. Belmont

DATE: August 18, 1958

FROM : R. R. Roach

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 10-14-88 BY Sp1/AG/gtt

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

Tolson
Boardman
Belmont
Mohr
Nease
Parsons
Rosen
Tamm
Trotter
Clayton
Tele. Room
Holloman
Gandy

SUBJECT: FUND FOR THE REPUBLIC

SECRET

Re my memorandum 7/28/58 which reflected the Fund for the Republic's two-year report named 50 individuals connected with the Fund's Basic Issues Program. Memoranda containing derogatory information from Bufiles concerning 24 of the 50 names mentioned are attached and arranged alphabetically. References for the remaining 26 names were reviewed and no derogatory information was developed.

CLASSIFIED BY: Sp1/AG/gtt
DECLASSIFY ON: OADR
8/3/88
D.C. # 285232

COMMON DEFENSE PROJECT

The two-year report contained little about the Common Defense Project which is deemed to be the most controversial as far as the Bureau and the Government's anticommunist programs are concerned. The only person named in the report not previously known to be connected with this Project is John Graham of the District of Columbia bar who is writing an "Occasional Paper" soon to be published concerning the universal military obligation and the impact upon the individual of the draft and reserve acts and other manpower laws and regulations. Graham may be identical with the subject of an applicant investigation conducted by the FBI in May, 1957; no derogatory information developed. (77-75076)

TRADE UNION PROJECT

Memoranda containing derogatory information from Bufiles concerning 10 of the 15 individuals named in the two-year report as being connected with the Trade Union Project are attached. Two individuals are former Communist Party (CP) members (Carliner, Meyers); 3 were identified as having been at one time affiliated with Communist Party front organizations (Tyler, [redacted] Barbash); 3 were reported as having been sympathetic to CP causes in the past and 2 of these had brothers who were former CP members (Bunzell, [redacted] Wirtz); 1 had a niece residing with him who was a CP member but CP membership was unknown to him (Taft); and 1 was anticommunist but supported other cited revolutionary organizations in 1942-43 (Selznick).

b6
b7C
b7D

Enclosures

JJG:mjg (6)

ENCLOSURE

REC-15 100-391697-575

EX-128

15 AUG 21 1958

1 - Mr. Belmont
1 - Mr. W. C. Sullivan
1 - Mr. Nease
1 - Liaison Section
1 - Mr. Gavin

AUG 25 1958

EX-128

SECRET

Memo Roach to Belmont
Re: FUND FOR THE REPUBLIC

CORPORATION PROJECT

Memoranda containing derogatory information from Bufiles are attached regarding 7 of the 14 individuals named in the two-year report as being connected with this project. Despres was alleged to be a CP member along with his wife during early 1940's; Wheeler and Kessler supported CP causes; Pitzle was a former member of the Young Communist League (cited) in the 1930's and his wife was a CP member; [redacted] reportedly made derogatory reference to the U.S. and a pro-Stalin remark in 1951; Kaysen hired as domestic help a Swedish citizen whose father was a Swedish communist fellow traveler; no derogatory information regarding Means was found but his wife was a member of CP fronts during 1936-41. b6 b7C

RELIGIOUS INSTITUTIONS PROJECT

Memoranda containing derogatory information on 5 of the 13 individuals named in the two-year report as being connected with this project are attached. Pfeffer and Johnson have supported CP causes in the past; Miller in 1948 admitted membership in religious organizations which he said were associated with communist-led organizations; Howe has spoken against anticommunist legislation 1946-57; and Gordis has sponsored CP front group activities 1944-49.

MASS MEDIA PROJECT

Three individuals were named in the two-year report as being connected with the Mass Media Project. A memorandum containing derogatory information regarding one of these is attached; Horton was reportedly a member of a CP front group and a social acquaintance of Alger Hiss.

PROJECT ON POLITICAL PARTIES, PRESSURE GROUPS AND PROFESSIONAL ASSOCIATIONS

Five individuals were named as being connected with this project and Bufiles contain derogatory information concerning one of these; Hofstadter was a member of a CP front organization from 1932-36.

ACTION:

None. For information.

8/19

1 - Original
1 - Mr. Belmont
1 - Mr. W. C. Sullivan
1 - Liaison Section
1 - Mr. Gaffney

~~SECRET~~ Summary

b6
b7C

[redacted] University of California, Los Angeles, California, is a member [redacted] on the Fund's Trade Union Project. (Two-year Report; 5-31-58)

Bureau files reflect [redacted] was one of 117 individuals who assisted Adam Yarmolinsky in gathering case histories for his booklet entitled "Case Studies in Personnel Security." This booklet presented a selection of cases of Government employees' hearings under the loyalty program. [redacted] was investigated under the Loyalty of Government Employees program in April and May, 1951, on the basis that [redacted] Los Angeles Chapter of the National Lawyers' Guild. On April 26, 1951, [redacted] admitted to Agents of the FBI that he had been a Communist Party member in the Los Angeles County Communist Party [redacted] On February 8, 1952, the Civil Service Commission advised that [redacted]" (121-28389-26)

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The National Lawyers' Guild was cited as a communist front by the Special Committee on Un-American Activities, House Report 1311, dated March 29, 1944, page 149.

A secretary and a commissioner of the Federal Mediation and Conciliatory Service, Los Angeles, advised in March, 1952, that [redacted] was considered to be sympathetic to the Communist Party by persons in the field of labor management relations. No information to substantiate this allegation was received. (121-34932-4 Pages 2 and 11)

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b7C

CLASSIFIED BY: SP1 AC/tt
DECLASSIFY ON: OADR
10/18/86

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

~~SECRET~~

J. J. GAFFNEY:pwf (5)

100-391697-575

ENCLOSURE

1-Orig
1-Mr. Belmont
1-Mr. W. C. Sullivan
1-Liaison Section
1-Mr. Montgomery

JACK BARBASH ~~SECRET~~ Summary

NY

Jack Barbash, of the School of Workers, University of Wisconsin, is examining the problems of democracy and individual rights in local unions under the Fund's Trade Union Projects. (Two-year report 5-31-58)

The above individual is probably identical to one Jack Barbash who was born August 1, 1910, in New York. Barbash has held many positions in the fields of Labor and Economics since 1933, and in February, 1952, he was Staff Director of the Senate Subcommittee of Labor and Labor Management Relations. This position he secured through a personal recommendation of Senator Hubert Humphrey of Minnesota.

In April, 1948, the Civil Service Commission requested the Bureau to conduct a loyalty-of-Government-employee investigation and in May, 1948, advised that Barbash had resigned from the Department of Labor and accordingly an investigation was not conducted.

On January 18, 1950, Mr. William N. Dunstan, Investigator for the Senate Subcommittee on Labor Management Relationships, advised that Barbash was reportedly a member of the Milk Consumers Protective Committee in 1940, and was also a member of their Executive Board. In 1944, the House Committee on Un-American Activities described the Milk Consumers Protective Committee as an offshoot of the Consumers Union. The Consumers Union has been cited as a Communist front by the House Committee on Un-American Activities.

On October 25, 1950, David Saposs, Deputy Director, Labor Division, ECA, Paris, France, advised that George Shaw Wheeler, a former Army employee who renounced his American citizenship while stationed in Germany in 1950, and was granted asylum behind the Iron Curtain, helped to organize the Washington Bookshop Association and that Wheeler had solicited Jack Barbash to join or contribute to the organization which he was forming. Subsequent to ascertaining this information, Barbash was interviewed by Bureau Agents and he reported that Wheeler was in his opinion a member of the Communist Party. Barbash did not indicate that he had ever contributed to or joined the Washington Bookshop. The Washington Bookshop has been cited under the purview of Executive Order 9835.

JDMontgomery:sal
(5)

~~SECRET~~

100-39167-575

ENCLOSURE

2

1-Orig
1-Q. Belmont
1-Mr. W. C. Sullivan
1-Liaison Section
1-Mr. Montgomery

JACK BARBASH

SECRET

Barbash has been connected in the capacity of Executive Committeeman, chairman, organizer, or subscriber to the following organizations:

1. Inter-Union Associates Incorporated
2. National Education Service Organization of New York
3. Workers Defense League
4. League for Industrial Democracy
5. Americans for Democratic Action
6. Socialist Party
7. National Sharecroppers Week - Publication

It was reported that the Inter-Union Associates, according to the records of the House Committee on Un-American Activities, had two members on its Executive committee and two members on its staff who were alleged to be connected with the Communist Party or groups described as communist fronts. Mr. William N. Dunstan, an investigator, in 1950, stated the Senate Committee on Labor and Management Relationships advised that this organization probably had subversive connections.

Dunstan advised that Barbash was an active member of the National Education Service Organization of New York and was serving as chairman of the Washington branch of this group. According to the records of the House Committee on Un-American Activities, this group had two members on its Executive Board who were described as affiliated with communist front organizations.

The Workers Defense League was organized in May, 1936, by leading members of the Socialist Party. It was a defense movement for the Socialist Party serving the party in somewhat the same capacity as the former International Labor Defense served the Communist Party. The National and Executive Committees of the Workers Defense League are composed of Socialists and extreme "left-wingers."

The League for Industrial Democracy was directly sponsored by the Socialist Party of the United States and its guiding spirit was Norman Thomas. It agitated for Government ownership of all banking, transportation, insurance, communications, mining and the like. It was also opposed to the ROTC in college.

SECRET

JACK BARBASH

~~SECRET~~

Americans for Democratic Action was organized on January 4, 1947, at Washington, D. C. The immediate purpose of Americans for Democratic Action, at the time of its formation was to re-establish the liberal movement "free from the totalitarian influence from either the left or the right." It specifically barred Communists from membership. The leadership is not communist; however, the organization has been criticized for espousing some programs similar to the programs of the Communist Party.

According to the 1948 report of the California Legislature Committee on Un-American Activities, the National Sharecroppers Fund was a Communist front organized for the purpose of creating agitation and dissension in agricultural districts throughout the United States. The report also noted that its communist character was indicated by the personnel of its national board.

Barbash was connected with the Socialist Party for some time and in 1938 he ran for the State Senate in the State of New York on the Socialist Party ticket. 121-4502
101-5723

~~SECRET~~

4

1 - Orig
1 - Mr. Belmont
1 - Mr. W.C. Sullivan
1 - Liaison Section
1 - Mr. Montgomery

Summary

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b7C

~~SECRET~~

[redacted] University of California, Los Angeles, California, is studying the effectiveness of union constitutions in protecting the members under the Fund's Trade Union Project. (Two-year report. May 31, 1958)

[redacted] was born on [redacted] and is married to [redacted] He received LLB, Yale University in 1952. He was naturalized in 1942 in New York City. The records at the University of California, Berkeley, California, reflect that [redacted] legally changed his name in [redacted] served in the United States Army, [redacted] and [redacted] in a United States Army school in Shanghai, China, 1945-46.

b6
b7C

On January 23, 1948, [redacted] registered with the Alameda County Registrar of Voters indicating his intention of affiliating with the Independent Progressive Party. [redacted] re-registered on September 3, 1948, indicating his intention of affiliating with one of the major political parties. The records of the Alameda County Clerk further reflect that the name [redacted], Berkeley, California, was listed as one of the several individuals who circulated petitions in an effort to get the Independent Progressive Party on a ballot in California. The Independent Progressive Party in California was cited as a communist dominated organization by the California Senate Fact-Finding Committee on Un-American Activities, Report, 1955, page 46. (100-392755-9)

b6
b7C

~~(S)~~ A confidential informant advised in 1950 that [redacted] had been in correspondence with [redacted] twice during the latter part of 1950. [redacted] is alleged to have been [redacted] in May, 1946, and employed by [redacted] at the same time. Investigation of [redacted] has not developed any espionage activity in the United States, but he is known to have been in contact in the United States with several persons of known Communist Party membership or sympathy. (100-356041 124, 140)

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b7D

J.D. Montgomery:sal/jyl
(5)

~~SECRET~~

100-391697-575

ENCLOSURE

1 - Original
1 - Mr. Belmont
1 - W. C. Sullivan
1 - Liaison Section
1 - Mr. Gaffney

~~SECRET~~

JOHN ~~BUNZELL~~ BUNZELL SUMMARY

John Bunzell, Stanford University, Stanford, California, is studying the role of the union in the political community under the Fund's Trade Union Project.

No investigation has been conducted by the FBI concerning John Bunzell. A review of Bureau files fails to reflect any information identifiable with him; however, the following information concerns one John H. Bunzel who may or may not be identical:

The October, 1949, issue of "Harper's Magazine" carried an article by Mr. Bernard DeVoto entitled "Due Notice to the FBI" in which DeVoto was highly critical of the FBI. The December issue of the same publication carried a letter from John H. Bunzel of Berkley, California, who described DeVoto's article as "a firebrand piece of journalism in the best muckraking tradition, desperately needed at a time when sanity is on the wane." Mr. Bunzel further stated "I vote 'damned right' with Mr. DeVoto." (94-3-4-550-37)

According to a U.S. Naval Intelligence Report dated October 16, 1956, files of the 12th Naval District reflected that John H. Bunzel was president of the Graduate Students Association at the University of California, Berkley, California, during 1949 and 1950. This organization took a formal stand against the loyalty oath established by University of California Regents. Bunzel, in his capacity as president of the Graduate Students Association, spoke against the loyalty oath on several occasions and also urged student voters to support an individual, suspected of being a communist, for a position in the University of California student government. Bunzel spoke against the loyalty oath on April 12, 1950, at a meeting of an organization of University of California students which was known to have been infiltrated by individuals suspected of being communists, according to files of the 12th Naval District. (100-391422-4 page 24)

~~SECRET~~

100-391697-575

J.J. GAFFNEY:jyl/pwf
(5)

REPORT August 13, 1958

LEWIS MORTON CARLINER

Lewis Carliner, assistant education director, United Automobile Workers, is presently working on a paper dealing with the new philosophy for the labor movement under the Fund's Project on the Trade Union.

Lewis Carliner was the subject of a Hatch Act investigation by this Bureau during 1941 and 1942, which investigation was later converted to a Security Matter - C type closed in 1951.

When interviewed in March, 1942, Carliner, who was then employed by the Department of Agriculture, readily admitted membership during 1936 in the Communist Party in Cincinnati, Ohio. Although Bureau files indicate he was a member of the Washington Committee for Democratic Action, he denied this during the interview. In 1946, he became managing editor of "Ammunition," a publication of the United Automobile Workers and at that time resided in Detroit, Michigan. Informants who have furnished reliable information in the past, stated Carliner was identified with the Reuther-controlled "right wing" faction in the union and reportedly is a socialist who has admitted former membership in the Communist Party. In 1951, he was not known to other informants having knowledge of Communist Party activities in the Detroit area.

Bureau files also reveal that Carliner's former wife, Lillian, and his brother, David, were formerly members of the Communist Party.

ENCL.

100-391697-575

EMILE DESPRES

Emile Despres, Williams College, Williamstown, Massachusetts, is a member of a seminar that meets monthly to discuss the bearing of the corporation on freedom and justice under the Fund's Corporation Project. (Two Year Report, 5-31-58)

Despres was the subject of a Hatch Act investigation in 1942, an investigation under the European Recovery Program in 1948, and a Security Matter - C investigation in 1951. Bureau files reflect he was a member of the Washington Committee for Aid to China and wrote an article which appeared in the publication of that organization "China Aid News," dated April, 1941. The names of Mr. and Mrs. Despres appeared in the active indices of the American Peace Mobilization in 1941* Edward C. Carter, a board member of the Institute of Pacific Relations (IPR), advised the Senate subcommittee investigating the IPR that Emile Despres had been a contributor to or connected with the IPR for some time. During the Hatch Act investigation Despres denied under oath that he was a member of the American Peace Mobilization.

Bureau files reflect his wife was a member of the Washington Committee for Democratic Action and was chairman of the Education Committee of the Washington League of Women Shoppers in 1941-1942. (124-740-19) (101-1489-14)(100-364447-86 page 23)

The American Peace Mobilization and the Washington Committee for Democratic Action have been designated by the Attorney General of the United States pursuant to Executive Order 10450. The Washington Committee for Aid to China was cited as a communist controlled organization by the Special Committee on Un-American Activities House Report 1311 dated March 29, 1944, page 143. The League of Women Shoppers was "an organization found to be a communist controlled front by indisputable documentary evidence obtained from the files of the Communist Party in Philadelphia" according to the Special Committee on Un-American Activities House Report 1311 dated March 29, 1944,

J.J. GAFFNEY:llg
(5)

*Article was anonymous but determined to have been written by Despres.

ENCLOSURE

pages 121 and 181. According to the Senate Judiciary Committee, Senate Report 2050 dated July 2, 1952, pages 223 and 225, "The IPR was a vehicle used by the communists to orientate American Far Eastern policies toward communist objectives." "Members of the small corps of officials and staff members who control IPR were either communist or procommunist."

[redacted] b7D

A confidential informant who has furnished reliable information in the past advised in May, 1951, that he knew the wife of Emile Despres to be a member of the Communist Party during the time Despres resided in the Washington, D. C. area. The informant recalled comments made by Mrs. Despres which indicated that her husband's Communist Party membership was taken for granted. [redacted] (101-1489-16) b7D

The above informant also advised that Emile Despres accompanied Lauchlin Currie on a trip to China in 1941. Informant recalled that this trip by Despres was important to the Communist Party movement. A White House statement to the press on January 23, 1941, reflected that Lauchlin Currie, Administrative Assistant to the President, and Emile Despres, Senior Economist in the Division of Research and Statistics of the Board of Governors of the Federal Reserve System, would visit China and Generalissimo Chiang Kai-shek to secure firsthand information on the general economic situation in China. (101-3616-72; 184)

In 1947 Despres was a character witness on behalf of Carl A. Marzani who was convicted on charges of concealing his Communist Party affiliations when applying for a Federal job and who worked under Despres in the Office of Stratigic Services. Despres said he had heard allegations that Marzani was a communist but satisfied himself that the allegations were false. (124-740-29)

1 - Original
1 - Mr. Belmont
1 - W. C. Sullivan
1 - Liaison Section
1 - Mr. Gaffney
1 - Mr. Huelskamp

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RABBI ROBERT GORDIS

~~SECRET~~ SUMMARY

Rabbi Robert Gordis of the Jewish Theological Seminary is one of a group of eight advisors to the Fund's Religious Institutions Project. Rabbi Gordis resides at 153 Beach 133rd Street, Belle Harbor, Long Island, N.Y. and maintains an office at 455B 135th Street, Rockaway Park, New York. He has not been investigated by the FBI.

An advertisement entitled "An Open Letter to Governor Thomas E. Dewey" appeared in the October 9, 1944, issue of "The New York Times," which advertisement was inserted by the Schappes Defense Committee and requested the pardon of Maurice U. Schappes. The name Rabbi Robert Gordis, Rockaway Park, Long Island, appeared among the signers. The Schappes Defense Committee has been designated by the Attorney General pursuant to Executive Order 10450.

According to a confidential informant who has furnished reliable information in the past, in September, 1947, one Rabbi Robert Gordis was a sponsor of the American Committee for Yugoslav Relief, Inc. This group has been designated by the Attorney General pursuant to Executive Order 10450.

According to the letterhead of the Joint Anti-Fascist Refugee Committee's Spanish Refugee Appeal, one Dr. Robert Gordis appeared as a national sponsor on letterheads dated August 24, 1945, October 29, 1948, and June 10, 1949. The Joint Anti-Fascist Refugee Committee has been designated by the Attorney General pursuant to Executive Order 10450.

According to the program of the Cultural and Scientific Conference for World Peace held in New York City from March 25 to 27, 1949, under the auspices of the National Council of the Arts, Sciences, and Professions, one Rabbi Robert Gordis was listed as a sponsor. This Conference and Council were cited by the House Committee on Un-American Activities in April, 1949.

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B.L. HUELSKAMP:pwf
(6)

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ENCLOSURE

RABBI ROBERT GORDIS

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According to the July 9, 1952, issue of the "Daily Worker," a former east coast communist newspaper, Dr. Robert Gordis, Jewish Theological Seminary of America, Rockaway Park, New York, was one of the signers of an "Open Letter" circulated by the National Committee to Repeal the McCarran Act, which letter urged the Republican and Democratic parties to include in their 1952 platforms a plank calling for the repeal of the McCarran Act. The National Committee to Repeal the McCarran Act was described as a communist front by the Internal Security Subcommittee of the Senate Judiciary Committee in its report dated April 23, 1956.

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RICHARD HOFSTADTER SUMMARY

Richard Hofstadter of Columbia University, New York, is preparing an essay on the nature, function, cause, organization, and effectiveness of pressure groups on the Right under the Fund's Project on Political Parties, Pressure Groups and Professional Associations.

Richard Hofstadter has not been investigated by the Bureau. Bureau files indicate, however, that in March, 1951, information was received from an individual who identified himself as a former active leader in the National Student League during the period of 1932-1936, which information may relate to the Richard Hofstadter of interest. This individual identified Hofstadter as a contempory leader of his in the National Student League Chapter at the University of Buffalo during the aforementioned period. In further identifying Hofstadter, this individual advised that Hofstadter was a graduate of Buffalo University in the class of 1936 and in 1951 was employed as a Professor of History in a college at Brooklyn, New York.

The Special Committee on Un-American Activities in a report dated March 29, 1944, and a report dated January 3, 1939, cited the National Student League as follows: "The communists' front organization for students about which Earl Browder, former general secretary of the Communist Party, said, 'From the beginning it has been clearly revolutionary in its program and activities.'" (62-60527-50023)

W. F. WOODS:llg
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1L 100-391697-575

ENCLOSURE

ROBERT W. HORTON

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Robert W. Horton, former Director of Information, National Defense Advisory Commission, is conducting a study of the controversy raging over paid television under the Fund's Mass Media Project. D,C

In 1941 and 1942, while Director of Information for the Office for Emergency Management, Mr. Horton was investigated under the Hatch Act in view of statements made that he was a member of the Washington Committee for Democratic Action, an organization designated by the Attorney General pursuant to Executive Order 10450. On March 23, 1942, Mr. Horton was interviewed under oath by Special Agents and emphatically denied that he had been a member of the Washington Committee for Democratic Action and further that he had not contributed money or personal services in the interests of that organization. It is noted that at the conclusion of the interview, when asked if he would like to say anything that would be pertinent to the inquiry, he replied, "Nothing particularly; I have no plea to enter one way or the other. I am not concerned with any of the organizations which you or Mr. Dies or anybody else has classed as being so-called communist front organizations." Mr. Horton was also the subject of an applicant-type investigation conducted by the Bureau in 1943, at the request of the Office for Emergency Management. This investigation was favorable. (77-26317)(101-3605)

Mr. Horton and his wife, Lola, were interviewed on three occasions in connection with the Alger Hiss case, it being noted that they were neighbors in Washington, D.C., during the 1940's. The Hortons admitted social acquaintanceship with Alger Hiss and his wife, Priscilla. There is no information in Bureau files indicating anything other than a social relationship between the Horton and Hiss families. It should be noted, however, that on the occasion of the third interview, the interviewing agent believed it pertinent to remark that although the Hortons professed their sincere willingness to cooperate in the Hiss investigation, they were considered evasive, volunteered no information, and unless specifically questioned on known points, offered nothing of value. Further, they expressed their belief in the complete innocence of Alger and Priscilla Hiss, which may have had a bearing upon their attitude. (74-1333-3077, 3097)

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ENCLOSURE

100-391697-575

MARK DE WOLFE HOWE ~~REPORT~~ SUMMARY

N.Y.

Mark DeWolfe Howe, Professor of Law at Harvard University, is currently engaged on the Fund's Project on Religious Institutions. His particular interest with regard to this project is to study the question of Governmental support of religious schools and religious instructions and observances in public schools.

Mr. Howe has not been investigated by the Bureau although files contain numerous references to him. He was born in Boston, Massachusetts, May 22, 1906 and has been at Harvard University since 1945.

A throwaway issued by the Civil Rights Defense Committee in November, 1941, which committee was organized by the Socialist Workers Party for the purpose of defending the members indicted in Minneapolis, Minnesota, listed Mark DeWolfe Howe, Dean, School of Law, Buffalo University, as a member of the personnel. The Socialist Workers Party has been designated by the Attorney General of the United States pursuant to Executive Order 10450.

The "Boston Herald" newspaper of June 8, 1946, lists the officers of the Massachusetts Civil Liberties Union for the year 1946. Among the names listed was Professor Mark Howe, Jr., of Harvard, who was listed as a member of the General Committee for a three-year period. It was reported by an informant, who furnished reliable information in the past, during 1951 that the Civil Liberties Union of Massachusetts had constantly provided opposition to legislation directed against the Communist Party and for its members. The opposition had taken the form of newspaper comment and personal appearances of Civil Liberties Union members before Legislative Boards at the Massachusetts State House, which was on behalf of protection of "Civil Liberties" and "Civil Rights."

Information received in October, 1950, reflects that the name of Mark Howe, Harvard University, Cambridge, Massachusetts, was included on the mailing list of the National Committee to Defeat the Mundt Bill. The National Committee to Defeat the Mundt Bill was cited by the

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CLOSURE

100-391697-575

Mark DeWolfe Howe

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Congressional Committee on Un-American Activities, Report on the National Committee to Defeat the Mundt Bill, a Communist lobby, House Report number 3248, January 2, 1951, as "a registered lobbying organization which has carried out the objectives of the Communist Party in its fight against anti-subversive legislation."

An informant who furnished reliable information in the past advised in October, 1950, that Robert Silberstein, National Executive Secretary of the National Lawyers Guild, had been in contact with Professor Mark DeWolfe Howe, Harvard University, Cambridge, Massachusetts. The informant stated that according to Silberstein, Professor Howe was in complete agreement with the National Lawyers Guild's position in its efforts to avoid being designated as subversive and stated that he would join in a public statement in opposition to the Attorney General's action. The informant said that Professor Howe further stated, according to Silberstein, that he would attempt to initiate such a statement among his fellow professors at Harvard Law School and would try to induce other professors to write law review articles regarding the Attorney General's authority, or like thereof, in such procedures.

The November 25, 1953, edition of the "Christian Science Monitor," Boston, Massachusetts, carried an article captioned, "Invoking the Fifth Amendment." The article states that Professor Mark A. DeWolfe Howe of Harvard Law School and Samuel P. Sears, former president of the Massachusetts Bar Association, were asked to debate the question, "The Fifth Amendment-Shield or Smoke Screen" at the Temple Israel Meeting House the previous night. The article stated, in part, the following: "Professor Howe said: 'The people have been led to believe that the issues surrounding the use of the Fifth Amendment by persons before congressional investigating committees are simple. The bar has done nothing to make clear the fact that invoking the Fifth Amendment is not an admission of guilt and never has been....' 'We have all tended to become absolutists,' Mr. Howe said. 'Of course, the Fifth Amendment has been used as a smoke screen by some,' he admitted. But it

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Mark DeWolfe Howe

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is unfair 'to say that its use by men of professional competence and moral integrity who have never tried to indoctrinate their students with their ideas are abusing their constitutional privileges....'"

Mark DeWolfe Howe, speaking at a symposium on "The Scientist in American Society" at the 120th meeting of the American Association for the Advancement of Science, said that not only are the universities asked to exclude from their faculties teachers who may have incurred suspicion, but are asked to have the committees decide who will be permitted to teach in the future. Howe said, "Liberty lies in the hearts of men and women, and when it dies, nothing can save them. We rest our hopes of liberty too much on the constitution...." (62-60527-3890?)

In December, 1957, Professor Howe, in an appearance before the Anti-Smith Act Protest Meeting sponsored by the Massachusetts Civil Rights Defense Committee was extremely critical of the Smith Act, the Internal Security Act of 1950, and the Communist Control Act of 1954. Speaking before this group in Boston he said that the Smith Act was unnecessary in that its objective could have been achieved as well, if not better, by the old Civil War statutes and was extreme in that it gave the state power to act "two steps removed;" that is, behind action to the preliminaries of action. He said that the Internal Security Act subjected the Communist Party to supervision by administrative controls and added a "preventive" restraint to the already existing criminal law. He said the Communist Control Act, without changing past laws, outlawed the Communist Party which was not outlawed under the Internal Security Act requiring registration, disclosure and labelling. This, Professor Howe said, is an example of how these acts work at cross purposes with one another. He termed the Communist Control Act as "essentially a bill of attainder" and analogous to the legal war on the National Association for the Advancement of Colored People by southern legislators. (The Harvard Law Record, October 24, 1957) (100-3-74).

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1-Mr. Belmont
1-Mr. W. C. Sullivan
1-Liaison Section
1-Mr. Montgomery

U.S.A. F. ERNEST JOHNSON Summary

SECRET

F. Ernest Johnson, affiliated with the National Council of the Churches of Christ, is one of a group of eight advisors to the Fund's Project of Religious Institutions.

A confidential informant furnished a folder published by the American Council for Christian Laymen in 1950 entitled "How Red is the Federal Council of Churches?" This folder sets forth that many of the present and past officers of the Federal Council of Churches have aided and abetted communist front organizations. The folder listed F. Ernest Johnson, Federal Council Secretary, as one of the Federal Council leaders who have helped communist organizations. 100-3-3290 page 186

In the January, 1938, issue of "American Mercury" there appears an article written by Harold Lord Varney entitled "Radicals in our Churches." In this article Varney devotes two pages in setting forth information indicating that Dr. F. Ernest Johnson, head of the Department of Research and Education of the Federal Council of Churches is "doctrinally leftist." Varney uses excerpts from Johnson's book "The Church and Society" published in 1935, to prove his belief that Johnson is a radical leftist. 61-7559-2116X

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ENCLOSURE

August 8, 1958

CARL KAYSEN SUMMARY

Carl Kaysen of Harvard University is making a study of the management doctrines governing the relations of employers with employees under the Fund's Corporation Project.

A review of the Bureau files reflected Kaysen was investigated by the FBI in 1942 as an employee of the Office of Coordinator of Information and again in 1957 as a Departmental applicant. Neither investigation developed any derogatory information.

Referral/Consult

[redacted]

By letter dated April 23, 1958, the Boston office advised they had developed no indication that Miss von Hofsten was engaged in Communist Party activities in the Boston area.

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ENCLOSURE

1 - Original
1 - Mr. Belmont
1 - Mr. W. C. Sullivan
1 - Liaison Section
1 - Mr. Montgomery

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FREDERICK KESSLER Summary

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Kessler is a member of a seminar that meets monthly to discuss the bearing of the corporation on freedom and justice under the Fund's Corporation Project. The only identifiable pertinent infromation contained in Bureau files disclosed that Frederick Kessler was one of twenty-two full-time faculty members of Yale University who signed a letter to President Truman in 1947 calling for the abolition of the House Un-American Activities Committee. (121-134869-9)

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J.D. MONTGOMERY:pwf (5)

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19 100-391697-575

ENCLOSURE

GARDINER MEANS

Gardiner C. Means, economist formerly with the Committee for Economic Development, is currently associated with a seminar sponsored by the Fund for the Republic that meets monthly to discuss the bearing on the corporation on freedom and justice. The seminar is in connection with a Fund project to discover the effects upon society of the tremendous development of the modern corporation and to seek to arrive at some standards of judging these effects.

Mr. Means has not been the subject of a Bureau investigation although his wife, Caroline F. Ware, has been investigated under the provisions of Executive Order 9835.

Caroline Ware, on her employees loyalty form, listed membership in the following organizations: (1) Washington Chapter, League of Women Shoppers, 1936-1941, cited by the Special Committee on Un-American Activities as a communist controlled front organization; (2) Consumers Union, member irregularly over many years, cited by the Special Committee on Un-American Activities as a communist front organization; (3) Washington Cooperative Book Shop, 1936-1938, designated by the Attorney General pursuant to Executive Order 10450.

The investigation substantiated the admission on the part of Caroline Ware but failed to develop additional derogatory information concerning her. The results of this investigation were furnished to the Civil Service Commission who advised the Bureau in 1954 that she had been retained or accepted.

With the exception of references to Gardiner Means as a result of his marital status, there is no derogatory information in Bureau files concerning him. (138-1138)(128-626)

W.F.WOODS:llg
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1 - Original
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1 - Liaison Section
1 - Mr. Gaffney

FREDERICK MEYERS

Frederick Meyers of the University of Texas, Austin, Texas, is examining the history of "right-to-work" laws in Texas under the Fund's Trade Union Project. (Two-year Report; 5-31-58)

Frederick Meyers was born in March, 1917, at Pittsburgh, Pennsylvania. He attended Columbia University in New York City 1933-36 and the University of North Carolina, Chapel Hill, North Carolina, where he received an A.B. degree in 1938, A.M. degree in 1939, and a Ph.D. degree in 1941. Meyers was employed with the Office of Price Administration, Washington, D. C., 1941-42; with the Labor Bureau of Middle West, Washington, D. C., 1942-45 and 1946-48; with the United States Treasury Department in Germany 1945-46. He was associate professor at the University of Texas, Austin, Texas, 1948-51, and left to become associate professor at the University of Illinois, Urbana, Illinois. In 1952, he was employed at the Institute of Labor and Industrial Relations of the University of Illinois, Champaign, Illinois. (100-375819-2, 7)

On January 6, 1951, Clarence W. Walton, who had previously admitted membership in the Communist Party while attending the University of North Carolina, Chapel Hill, North Carolina, in 1937-38, advised he knew one Fred Meyers as a member of the Communist Party at Chapel Hill. Walton stated he recalled that in 1937 or early 1938 Fred Meyers attended approximately two Communist Party meetings. He recalled that Meyers talked very authoritatively and gave the impression of being well versed in communism and an experienced Communist Party member. Meyers was a graduate student at the University of North Carolina and went to Washington, D. C., where he was employed by the Government. Walton recalled that Meyers returned to Chapel Hill on several weekends and was friendly with an individual who, according to Bureau files, was a Communist Party member in 1946 and 1949. (100-375819-1)

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J.J. GAFFNEY:pwf (5)

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100-391697-575

August 8, 1958

~~[redacted]~~ WILLIAM LEE MILLER

William Lee Miller, Yale Divinity School, New Haven, Connecticut, is one of eight advisors to the Fund's Religious Institutions Project.

Miller has not been investigated by the FBI. By letter dated March 1, 1948, Miller wrote to the FBI and stated as follows: "In connection with a course in Social Ethics at Yale Divinity School, I am writing a paper on youth organizations which are or have been accused of being communist or communist front groups. This is not entirely an academic project, for many of the organizations of a religious nature of which my friends and I are members, are associated with groups which are communist led, or are said to be so."

Miller inquired about six cited communist front organizations but did not indicate membership in any of them. Bureau files fail to reflect any information indicating that Miller was a member of any cited communist front group.

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22

100-391697-575

LEO PFEFFER SUMMARY

Leo Pfeffer, counsel for the American Jewish Congress, is presently a consultant to the Fund's Project on Religious Institutions.

Leo Pfeffer has not been investigated by the Bureau and due to lack of identifying information it could not be determined from a file review whether he is identical with one Leo Pfeffer of 183 Broadway, New York City, who in December, 1949, was known to be a member of the Civil Rights and Liberties Committee of the National Lawyers Guild. The National Lawyers Guild has been cited as a communist front by a Special Committee on Un-American Activities, House Report 1311, on the CIO Political Action Committee, March 29, 1944. (100-7321-46)

The name of Leo Pfeffer appeared in an advertisement of the new school for social research, which advertisement appeared in "The New York Times" issue of September 16, 1956. The advertisement reflected that Leo Pfeffer, author of "Church, State and Freedom," would lecture at the new school for social research on December 4, 1956, on the topic of "The Attack Upon the Secular Public School." (65-6656-108)

An article appearing in the "New York Post" under date of June 8, 1958, captioned "CLU Hits Board of Education for Insisting Teachers Inform" revealed that the New York Civil Liberties Union has blasted the Board of Education's "insistence that teachers must inform on others" as being "detrimental to morale and a waste of energy." The article indicated that the American Jewish Congress called the Board's action "unwise and unfortunate." Leo Pfeffer, head of the American Jewish Congress's legal section, pointed out that "if the Court of Appeals does accept the appeal, we intend to file a brief as amicus curiae in support of State Education Commissioner Allen's ruling." It was Allen's ruling against requiring teachers to inform on colleagues that the board had already twice appealed to the State Supreme Court and to the Appellate Division and lost. (61-190-A)

W.F.WOODS:llg
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23

100-391697-575

MERLYN S. PITZELE SUMMARY

Merlyn S. Pitzele, former labor editor of "Business Week," is currently writing on the subject of democracy in corporations under the Fund's Corporation Project and is analyzing the functions of the union in our society under the Fund's Trade Union Project.

ILL
N.Y

An applicant-type investigation was initiated on November 28, 1952, by the Bureau at the request of the Attorney General. The investigation disclosed that Pitzele, while attending the University of Chicago, participated in activities and demonstrations of the Young Communist League (YCL) during the 1930's. He admitted membership to an associate in the 1930's and was considered "one of them" by YCL leaders. The YCL has been designated by the Attorney General pursuant to Executive Order 10450. His wife in 1954, Patricia Lowe, according to an informant who has furnished reliable information in the past, was a communist and had formerly been married to Melvin Jones Fox, a reported communist and associate of members of a Soviet espionage conspiracy.

At a labor demonstration in Chicago in 1937, Pitzele allegedly joined in giving the communist salute and singing the "Internationale." He was arrested on two occasions in 1937 during labor disputes.

Numerous individuals contacted during the investigation reported that since 1940 his writings, particularly while labor editor of "Business Week," and his speeches have been anticommunist. Persons who have known Pitzele since 1940, including former Governor Thomas E. Dewey, Senator Henry Cabot Lodge, Jr., and Arthur H. Vandenberg, Jr., recommended him as to character, reputation and loyalty.

An allegation that Pitzele was a member of the Jay Lovestone movement in the 1920's was not substantiated during the investigation. (77-54763-111)

W.F. WOODS:11g
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24

100-391697-575

ENCLOSURE

Merlyn S. Pitzele

In November, 1957, Pitzele testified before the Senate Select Committee to Investigate Improper Activities in Labor or Management Field that former Teamster Union president, Dave Beck, paid him $15,000 through Beck's friend, Nathan W. Shefferman, for "advice" on how to run the union. Pitzele, who served as labor advisor to Thomas E. Dewey in the 1944 and 1948 Presidential campaigns and to President Eisenhower in the 1952 campaign, told the committee he quit his advisory role in 1955 "when I had by belly full" of the "festering" corruption he found in the Teamsters. Pitzele told the committee that neither Dewey, who appointed him to the New York State Mediation Board, nor Governor Averell Harriman, whom he served for a time after Harriman's election, knew of his services for the Teamsters. (62-103771-A)

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PHILIP SELZNICK Summary

~~SECRET~~

Philip Selznick, Professor of Sociology, University of California, Berkeley, California, is a member of the Fund's Trade Union Project.

In 1942 Philip Selznick of Knoxville, Tennessee, who is believed identical with captioned individual, was reported by an informant who has furnished reliable information in the past to have made a small financial contribution to the Young People's Socialist League, the youth group of the Workers Party. At that time Selznick was in Tennessee working on a study of the Tennessee Valley Authority from a standpoint of public administration and in preparing a thesis on this subject for a doctorate degree under a fellowship from the Social Science Research Council in New York.

In 1943 Philip Selznick, according to informants who had furnished reliable information in the past, was a subscriber to "The Militant," the official publication of the Socialist Workers Party, and also a subscriber to "Labor Action," official publication of the Workers Party. Also, in 1943, Selznick was in contact with Louis C. Fraina who was then teaching at Antioch College, Ohio, under the name Lewis Corey. It is noted that Fraina was one of the founders of the Communist Party movement in the United States and in 1952 was cooperating with the Bureau.

In May, 1947, Selznick, while an instructor in sociology at the University of Minnesota, participated in a debate with Carl Ross, then State Secretary of the Communist Party of Minnesota, regarding the foreign policy of the United States. During his remarks, Selznick stated that communism is a fascist doctrine which sought totalitarian rule and urged a "tightening of the present 'get tough' policy with Russia."

The Workers Party* the Socialist Workers Party, and the Communist Party have been designated by the Attorney General pursuant to Executive Order 10450.

Philip Selznick is the author of the book entitled "The Organizational Weapon: A Study of Bolshevik Strategy and Tactics," which was published in 1952 and described by the National Americanism Commission of the American Legion as "one of the most important books on communist operational methods and techniques available."
(100-188667)

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*Removed from Attorney General's list 7-18-58.

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ENCLOSURE

100-391697-575

1 - Original
1 - Mr. Belmont
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1 - Liaison Section
1 - Mr. Montgomery

PHILIP TAFT

SECRET

Philip Taft of Brown University, Providence, Rhode Island, is analyzing the election and turnover of officers in local unions under the Fund's Trade Union Project. (Two-year Report; 5-31-58)

The Bureau has not conducted an investigation concerning Taft; however, a confidential informant advised, in 1945, that [redacted] Providence, Rhode Island. A security investigation concerning [redacted] was instituted in 1944 and it was determined that both were active in the Communist Party and various front groups. A reliable informant made available a letter dated August 31, 1945, addressed to Helen Musil, State Secretary, Missouri State Communist Party, from [redacted] In this letter [redacted] advised that she was now residing with [redacted] in Providence, Rhode Island, and requested Musil to send her transfer to the Communist Party office in Providence, Rhode Island, as soon as possible as she was anxious to again participate in Party activities. [redacted] cautioned Musil to refrain from mailing the transfer card or any Party material in Party envelopes as her uncle did not know of her Party affiliation. (100-125693)

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[redacted]

J.D. MONTGOMERY:pwf:mld (5)

ENCLOSURE
I7 100-391697-575

August 13, 1958

GUS TYLER Summary

Gus Tyler, political action director and director of the training school, International Ladies Garment Workers' Union, is currently working on a paper dealing with the new philosophy for the labor movement under the Fund's Project on the Trade Union.

Gus Tyler has not been investigated by the Bureau but when interviewed as a reference in an applicant-type investigation in 1951, Tyler advised he was a member of the American Veterans Committee and since approximately 1946, he had been fighting communists and communism within the ranks of the Committee on a nationwide basis.

On March 30, 1954, Gus Tyler was indicated as one of the lecturers in a series of lectures sponsored by the Jewish Labor Committee in New York. His topic was "Communists in Trade Unions - Where They Are, How They Work and Why They Shouldn't."

The New York office in an endeavor to identify one Gus Tyler referred to a report dated May 19, 1939, at New York entitled "The American League for Peace and Democracy, Registration Matter" wherein it was indicated that Donald Henderson in an interview advised that one Gus Tyler of the Young People's Socialist League was one of those in attendance at meetings in New York City of the American Committee for Struggle Against War in 1932. From other references to Gus Tyler in Bureau files, it appears that this Tyler is identical with the one now working on the Fund's project.

ENCLOSURE

100-391697-575

JOHN HARVEY WHEELER Summary

John Harvey Wheeler, Professor of Political Science, Washington and Lee University, Lexington, Virginia, is associated with a seminar that meets monthly to discuss the bearing of the corporation on freedom and justice. The seminar is a part of a Fund project to discover the effects upon society of the tremendous development of the modern corporation and to seek to arrive at some standards of judging these effects.

Although John Harvey Wheeler has not been the subject of a complete investigation by the Bureau, a limited inquiry of him was conducted during 1955 predicated on the fact that he was extremely active in the Owen Lattimore Defense Fund. Lattimore was indicted by a Federal grand jury in the District of Columbia on December 16, 1952, on charges of perjury in several instances committed during his testimony under oath on July 13, 1951, and February 27, 1952, before the Internal Security Subcommittee of the Committee on the Judiciary, U.S. Senate.

John Harvey Wheeler was born October 17, 1918, in Waco, Texas, and received his Ph.D. degree in 1949 from Harvard University. During 1953-1954 Wheeler was employed as Assistant Professor of Political Science, Johns Hopkins University, Baltimore, Maryland. On April 13, 1953, an informant who has furnished reliable information in the past stated that Wheeler lectured before the Uplands Business and Professional Women's Club on March 17, 1952. He was to speak on the "new developments in the social sciences" but requested permission to change the topic and speak on "the constitutionality of Congressional hearings" since the Lattimore case was such a current topic in Maryland.

Wheeler, thereupon, lectured criticizing the methods of Congressional committees. In January, 1953, Wheeler and George Boas copyrighted a 61 page booklet entitled "Lattimore the Scholar," which contained for the most part testimonial letters to Lattimore written by 37 scholars.

A former student of Wheeler's at Johns Hopkins University advised that Wheeler had insisted the Rosenbergs were innocent and that he, Wheeler, was critical of the

W.F.WOODS:llg
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ENCLOSURE 29

100-391697-525

John Harvey Wheeler

American Legion, Congressional committees, and the FBI, using such terms as "witch hunting" and "anti-Semitic" in describing their methods. Although this individual did not consider Wheeler loyal to America, he could offer no proof of his disloyalty except his critical attitude toward American institutions. (100-413582)

1 - Original
1 - Mr. Belmont
1 - Mr. W. C. Sullivan
1 - Liaison Section
1 - Mr. Gaffney

WILLIAM WILLARD WIRTZ Summary ~~SECRET~~

W. Willard Wirtz, Lawyer, Professor of Law, Northwestern University, Evanston, Illinois, is a member of the research committee to act in an advisory capacity on the Fund's Trade Union Project. (Two-year Report; 5-31-58)

Wirtz was investigated by the FBI in 1950 under the provisions of the Atomic Energy Act of 1946 and resigned or was otherwise separated from Federal service prior to a decision on loyalty. Bureau files reflect that in February, 1947, a police sergeant of DeKalb, Illinois, Police Department advised that Willard Wirtz and his brother, Robert, were suspected of having communist tendencies as they were alleged to have attended meetings ten or fifteen years previous sponsored by an individual who was known as an outspoken communist.

Professor William Willard Wirtz was a sponsor of a committee established for the purpose of soliciting aid among the legal professions on behalf of individuals who had been arrested in Lewistown, Illinois, in July, 1940, while soliciting signatures in an effort to put the Communist Party on the ballot in Illinois.

A letter dated June 17, 1941, directed to the Lieutenant Governor of Illinois, was signed by W. Willard Wirtz and five other professors of law at Northwestern University and protested against proposed legislation designed to prohibit communist or fascist groups from being considered as political parties and given a place on the ballot. (116-191034-16)

A confidential informant, who has furnished reliable information in the past, advised that in June, 1941, Robert Wirtz, an officer of the International Labor Defense, stated that he had received word from his brother, William, that the professors at Northwestern University had prepared a memorandum on which they hoped to secure signatures for presentation to state officials in connection with the above proposed legislation. (116-179918-2)

~~SECRET~~

J.J. GAFFNEY:pwf (5)

100-391697-575

WILLIAM WILLARD WIRTZ

The International Labor Defense has been designated by the Attorney General of the United States pursuant to [redacted] Executive Order 10450.

Robert Wirtz, brother of William Willard Wirtz, was a Communist Party organizer in the State of Illinois from 1942 until 1944. In the Spring of 1948, he was reported to be a member but not in good standing of the Communist Party USA. On August 11 and 12, 1950, Robert Wirtz reportedly attended a district convention of the Communist Party held in Chicago, Illinois, and was elected to membership in the district committee of the Communist Party in Illinois. Robert Wirtz was interviewed by Bureau Agents in October, 1952. He admitted former Communist Party membership but refused to divulge any information regarding others. During his conversation with Bureau Agents, Robert Wirtz advised that the first one third of Governor Adali Stevenson's speech on communism were ideas that he, Robert, had given to his father and his father had written the entire speech. He stated the first one third of the speech was delivered by Stevenson exactly as he and his father prepared it. The Springfield Office advised, in October, 1952, that well-known publishers had indicated in articles that Willard Wirtz was writing Stevenson's speeches concerning labor. In August, 1955, Robert Wirtz was visited by Communist Party functionaries and he agreed to donate several hundred dollars to the Communist Party and assist any Communist Party businesses organized in the Newark, New Jersey, area. (116-191034-15) (100-13195-63, 81) (U)

A confidential informant, who has furnished reliable information in the past, advised that "W. W. Wirtz," with the same address as the father of Robert and Willard Wirtz, appeared on a list of subscribers to "The Worker." The subscription terminated on October 17, 1943. (116-179918-2) (U)

"The Worker" is an East coast communist weekly publication.

Some acquaintances of W. Willard Wirtz and his brother, Robert, and father, W. W. Wirtz, advised in 1950 that there has been little or no association between Robert Wirtz and his father and brother. One acquaintance advised that, during the late 1930's or early 1940's, Willard Wirtz and his father took sides against Robert during a discussion on politics and communism and that Willard and his father were anticommunist.

[redacted]

WILLIAM WILLARD WIRTZ

Some acquaintances advised that the father was a "free thinker" was unconventional and nonconforming and "leans to the left" because he favored Government ownership of several things. (116-191034-16)

Robert E. Wirtz was manager of Wirtz Company in Peoria, Illinois. A reporter of Dun and Bradstreet Incorporated advised that Wirtz Company was a family partnership which included Robert and Willard Wirtz as well as their father and other members of the family. Robert Wirtz was also secretary-treasurer of Multi-Ad Company in Peoria, Illinois, which had close financial ties with Wirtz Company. Bureau files reflect both companies employed several Communist Party members. (100-13195-51, 56)

SECRET

1-Mr. Belmont
1-Mr. W. C. Sullivan
1-Liaison Section
1-Mr. Gaffney
1-Original

[redacted] Summary

b6
b7C

Ill

[redacted] is a member of a seminar that meets monthly to discuss the bearing of the Corporation on freedom and justice under the Fund's Corporation Project.

SECRET

Ill D.C

[redacted] was the subject of a Security Matter-C investigation conducted by the FBI in 1951. Passport records reflect that [redacted] intended to leave Russia. the United States on June 25, 1947, to visit Great Britain, France, the Netherlands, and Switzerland for about four months [redacted] First World Conference of Federalists in Geneva [redacted] European internationalist organizations on behalf of the United World Federalists. [redacted] Illinois Council of the United World Federalists. In 1949 he traveled to India. 100-379185-6

b6
b7C

The United World Federalists is not a cited organization.

b6
b7C

Bureau files reflect [redacted] attended the Youth Festival in Prague, Czechoslovakia, in 1947, and was described by others who attended as one of the anti-communist minority in the United States delegation. He was interviewed by FBI Agents after returning and cooperated. 100-379185-12

On April 1, 1951, two police officers of the Mount Rainier, Maryland, Police Department furnished a signed statement which reflected that on the evening of March 23, 1951, they stood outside the window of the apartment of Mr. and Mrs. [redacted] and saw portions of a motion picture of India and heard part of the conversation taking place inside the apartment. Part of this signed statement is as follows:

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b7C

". . . On arrival the janitor pointed out an apartment where he said there were a number of Negroes on the inside and he told us we could see for ourselves what was going on. At the same time a resident of the building came to us and said he believed a communist meeting was going on in [redacted] occupied by a family named [redacted] . . .

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b7C

"We recalled that a scene was in the film about a poor village that had bad housing and streets. Upon showing this scene, the man remarked to the others, 'Do not mistake this,

JJG:sal
(5)

SECRET

100-391697-575

ENCLOSURE

34

[redacted]

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~~SECRET~~

This is not a frontier town in the United States, but it is the average village of India today. This filthy condition is on account of the domination of England and capitalistic America. Here you see a country that is divided and weak, but when World War III comes, through the great leadership of Stalin, India will be strong and ready.' He continued, 'Believe me, there will be a World War III.'"
124-5992-8 page 6.

A confidential informant who has furnished reliable information in the past advised on December 26, 1956, that [redacted] *arranged to visit the counselor at the Soviet Embassy, Washington, D. C., to discuss details of a trip to the Soviet Union by* [redacted] *and Mr. and Mrs. Chester Bowles, former head of the Office of Price Administration.* ~~(S)~~ *100-379185-10*

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b7C

In April, 1957, it was learned that [redacted] *had just returned from a fifteen day trip in the Soviet Union with Mr. and Mrs. Chester Bowles, where he had learned about the World Youth Festival to take place in Moscow during the summer of 1957.* [redacted] *indicated his support of the Festival and hoped the United States would be represented .* ~~(S)~~
100-379185-12

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b7C

By letter dated June 26, 1958, the Civil Service Commission advised that [redacted] *was to be employed by the President's Commission of Civil Rights. 100-379185-12*

b6
b7C

~~SECRET~~

FD-36 (Rev. 12-13-56)

FBI

Date: 8/11/58

Transmit the following in _____ (Type in plain text or code)

Via AIRTEL (Priority or Method of Mailing)

Mr. Tolson
Mr. Belmont
Mr. Mohr
Mr. Nease
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. W.C.Sullivan
Tele. Room
Mr. Holloman
Miss Gandy

TO: DIRECTOR, FBI (100-391697)

FROM: SAC, NEW YORK (62-11998)

SUBJECT: FUND FOR THE REPUBLIC
MIKE WALLACE TV INTERVIEW PROGRAM
INFORMATION CONCERNING

Re NY airtel 8/4/58.

For the Bureau's information, the MIKE WALLACE TV interview program on ABCTV, 10:00-10:30 p.m. Sundays, was cancelled for 8/10/58 and a special feature concerning the Gold Cup boat races from Lake Washington in Seattle was shown in its stead.

New York will follow previous Bureau instructions and monitor next Sunday's MIKE WALLACE show, when his guest is reported to be Dr. HENRY M. WRISTON, President of the Council on Foreign Relations. P.

FOSTER

3-Bureau (100-391697) RM
1-New York (62-11998)

RRF:EG
(5)

100-391697-576
REC-68
EX. - 135
4 AUG 21 1958

50 AUG 26 1958

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

Mr. Tolson
Mr. Boardman
Mr. Nease
Mr. Mohr
Mr. Nease
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Clayton
Tele. Room
Mr. Holloman
Miss Gandy

TO : DIRECTOR, F.B.I.
Attention: Mr. J. J. MC GUIRE

DATE: Feb. 20, 1958

FROM : SAC, DENVER (100-7692)

SUBJECT: FUND FOR THE REPUBLIC
IS - X

Reference Denver telephone call to the Bureau February 20, 1958.

Enclosed is a news clipping from the "Denver Post", Denver, Colorado, dated February 20, 1958, which is captioned "Probe Proposed FBI 'Secret Police' Trend Denounced" which item was brought to Mr. MC GUIRE's attention during reference telephone call. You will note this article quotes WALTER MILLIS who is described as a staff member of the Fund for the Republic as stating the FBI operations have spread "far beyond the concept of the Federal Bureau of Investigation when it was organized." The article continues "It's not necessarily the fault of J. Edgar Hoover....but it has been loaded on his shoulder by Congress and the executive department."

Also enclosed is a clipping from the "Rocky Mountain News" Denver, Colorado, 2/19/58 which reflects WALTER MILLIS and FRANK K. KELLEY, the latter described as Vice-President of the Fund for the Republic, spoke at the "first of a 4-session series of discussions of American Freedoms."

A review of the February 18, 1958, issue of "Colorado Daily" an independent newspaper published by the students of the University of Colorado, disclosed an article announcing the above-mentioned series of discussions.. The article states "The Political Science Department at the University organized the project at the request of the Fund for the Republic and University President Quigg Newton. James L. Busey, Associate Professor of Political Science is chairman of the committee in charge of the series here." For the Bureau's information QUIGG NEWTON is former Mayor of Denver, Colorado, a former Vice-President of the Ford Foundation, and has been President of the University of Colorado for approximately two years.

100-369697-577

2 - Bureau (Encl. - 2)
1 - Denver
HCM:jkw
(3)

EX-138 REC-60 8/21/58
3 FEB 22 1958

ENCLOSURE

FX-138

CRIM REC.

DN 100-7692

Security Patrol Clerk WILLIAM W. WILLIS who attends the University of Colorado, advised on February 20, 1958, that during a Political Science class on 2/19/58, Professor HENRY EHRMANN told the students that this series of lectures by the Fund For The Republic was brought to the University of Colorado through the influence of QUIGG NEWTON and the series was started at the University to get these intellectual programs away from the East.

The above is for the Bureau's information. No further inquiries are being made UACB.

Unless Advised To The Contrary By Bureau

'Political' Police Hit In Lecture at CU

By JACK GASKIE
Rocky Mountain News Writer

BOULDER, Feb. 18—The "huge apparatus of secret police and political police" that has grown in the United States would astound the writers of the Constitution, a spokesman for the Fund for the Republic said here Tuesday night.

Walter Millis, author and former newspaperman, added that most Americans now find the threat of internal communism "ridiculous."

Millis and Frank K. Kelley, Fund vice-president, spoke at Colorado University in the first of a 4-session series of discussions of American freedoms.

Millis said the federal Government has the constitutionally imposed duty of providing for the common defense and preserving individual liberty.

And the need for defense, he said, often impairs the rights of freedom.

PERTINENT QUESTIONS

He said that, outside the courts, it is pointless to argue whether an act in the national defense is constitutional. The pertinent questions, he said, are whether the act is necessary, whether it is effective, and whether it is as just and nondiscriminatory as possible.

He applied the tests to the nation's military manpower policy, and found the policy wanting: "One can't discern any future military requirement of total mobilization."

He argued that the tests all condemned the Smith Act and similar laws of the past two decades, which he defined as "aimed at identifying, disqualifying, punishing and rendering harmless those who hold seditious beliefs."

"These acts," he said, "are not based on any theory that it is criminal to be a Communist, but that one who is a Communist is untrustworthy.

HUNT IT DOWN

"This has often been called witch-hunting. If you believe that opinion is dangerous, then you must hunt it down. And you must use the tools of the witch-hunt—the self-incriminatory oath, guilt by association, the test of what you read and what you say."

Mallis said American courts since 1955 have been following the 3-fold test of necessity, effectiveness and nondiscrimination. They have found the threat of internal communism, he said, "greatly exaggerated."

"There have been protests against these decisions," he said, "by those who have made their careers out of hunting Communists. But there has not been a scintilla of evidence that our national security has been hurt."

Millis and another Fund representative, Paul Jacobs of Denver, will conclude the CU meetings on defense and freedom Wednesday.

Fund for the Republic
IS - X

ROCKY MOUNTAIN NEWS
Denver, Colo.
FEB 19 1958

100-391697-577
ENCLOSURE

PROBE PROPOSED

FBI 'Secret Police' Trend Denounced

BOULDER, Colo., Feb. 20.—A suggestion that the Federal Bureau of Investigation should itself be investigated for its "secret police" curbs on political ideas was discussed here Wednesday evening.

The proposal was made by Walter Millis, author, former newspaperman and a staff member of the Fund for the Republic, at a University of Colorado discussion meeting.

He said FBI operations have spread "far beyond the concept of the Federal Bureau of Investigation when it was organized."

"It's not necessarily the fault of J. Edgar Hoover," Millis said. "But it has been loaded on his shoulder by Congress and the executive department."

Millis said the shift of the FBI away from primarily criminal law enforcement into the field of political thought can be explained partly through the trend toward secrecy in government.

BELIEF A DANGER?

On the subject of "thought control" he said:

"Is holding a belief a danger to the state? Is a democratic state justified in moving against a belief?

"I believe that if there is a real danger to the state then we may extirpate a belief."

The Fund for the Republic, started by the Ford Foundation, is making long-term studies of various phases of individual freedom in the United States.

Discussions here Tuesday and Wednesday were part of a Fund study of "Individual Freedom and the Common Defense."

Other subjects and dates of Boulder discussion meetings are: March 11-12, "Individual Freedom and Trade Unions;" April 9-10, "Individual Freedom and Corporations," and May 14-15, "Religious Institutions in a Democratic Society."

"GAG" PROTESTED

Part of the Tuesday evening meeting was off the record, raising objections from some reporters who had been invited to cover the event.

Mayor Quigg Newton, who gave the order, said Thursday:

"I don't know what the fuss is all about. Can't a few men get together for an informal discussion without inviting the press?

"The guests were invited to this informal discussion on the assumption they could talk freely. If newspaper people were informed the meeting was to be open that was a mistake."

DENVER POST
Denver, Colo.
FEB 20 1958

FUND FOR THE REPUBLIC
IS - X

ENCLOSURE 100-391697-577

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. A. H. Belmont

DATE: August 15, 1958

FROM : R. R. Roach

Tolson
Boardman
Belmont
Mohr
Nease
Parsons
Rosen
Tamm
Trotter
Clayton
Tele. Room
Holloman
Gandy

SUBJECT: FUND FOR THE REPUBLIC
Mike Wallace Television Interview
With Dr. Henry M. Wriston
August 17, 1958

By airtel dated August 11, 1958, the New York Office advised that Mike Wallace would interview Dr. Henry M. Wriston, president of the Council on Foreign Relations, under the Fund-sponsored television interview program on August 17, 1958.

A review of Bureau files reflects Wriston has not been investigated by the FBI. He was born July 4, 1889, Laramie, Wyoming, and he became president of Brown University, Providence, Rhode Island, in approximately 1937 and is believed to have retired sometime subsequent to 1954.

The "Daily Worker," an east coast communist newspaper which suspended publication on January 13, 1958, in its issue of February 11, 1953, reflected that Wriston had attacked Congress for violating the Constitution by maintaining laws abridging human rights. He was quoted as having said: "One law signed by the President says you can be found guilty by association....another can deny you the right to a judge and trial. You can be jailed for things they presume you will do under certain conditions...not things you have done...."

The "Washington Times-Herald," March 31, 1953, reported that Wriston and four other university officials prepared a statement which indicated that communists, by the nature of their beliefs, are disqualified for university positions; that unless a faculty member violates a law, his discipline or discharge is a university responsibility and should not be assumed by political authorities; that discharge on the basis of irresponsible accusations or suspicions can never be condoned; that universities are bound to depreciate special loyalty tests which are applied to their faculties but to which others are not subjected; that invocation of the Fifth Amendment places a heavy burden of proof on a professor's fitness to hold a teaching position and lays upon his university an obligation to re-examine his qualification to membership in its society.

According to "The Washington Post" of September 22, 1953, Wriston called the United States Senate "one of the most ill-disciplined

100-394141-578

1 - Mr. Belmont
1 - Liaison Section
1 - Mr. Gaffney

REC- 67

AUG 22 1958

EX-135

AHL:nck (4)

59 AUG 28 1958

legislative assemblies in the United States" and said "there is plenty for Congress to do besides look under beds to find lurking communists."

The "Boston Globe" of October 15, 1954, reflected Wriston, during a speech, stated that the United States runs the danger of "political schizophrenia" when it becomes obsessed with internal security; such a situation opens the way for men who fear liberty to restrict freedom in the name of security. (62-60527-49719)

"The New York Times," March 11, 1958, reflected that on March 10 the Soviet Ambassador to the United States gave an off-the-record talk on issues in Soviet-American relations to about 200 members of the Council on Foreign Relations in New York City. Dr. Wriston, director of Columbia University's American Assembly, presided. (100-363673-86)

ACTION:

None. For information.

OFFICE OF DIRECTOR
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

Mr. Tolson
Mr. Belmont
Mr. Mohr
Mr. Nease
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. Jones
Mr. W.C. Sullivan
Tele. Room
Mr. Holloman
Miss Holmes
Miss Gandy

July 22, 1958

File

The attached two-year report of the Fund for the Republic was sent to the Director from the Fund for the Republic, 60 East 42nd Street, New York 17, New York.

Attachment
hbb

Records Section
Index all names, organizations and title of Booklet

3/4/88 SP5 CI RBG #290,569

3-20-89 ALL INFORMATION CONTAINED
SP8 HEREIN IS UNCLASSIFIED
DATE 8-8-83 BY

7/28/58 + 8/1/1958

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248999

20 AUG 26 1958

EX-113

Sp1 A G/gt
8/1/84
#285,232

CENTRAL RESEARCH

ENCLOSURE

SEP 8 1958